1937.

SUPREME COURT OF THE UNITED STATES.

No. 185.

JOHN F. ENNIS, ADMINISTRATOR DE BONIS NON OF JOSEPH ZOLKOWSKI & AL., ~~PLAINTIFFS IN ERROR~~, Appts.

vs.

J. B. H. SMITH, ADMINISTRATOR, &c., OF GEORGE BOMFORD, DECEASED, AND AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Jonathan B. H. Smith, administrator and trustee of George Bomford, Lewis Johnson, administrator de bonis non of Thadeus Kosciusko, James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith.

You are hereby cited to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, to answer the appeal from the decree of the circuit court of the District of Columbia, sitting in equity for the county of Washington, in a cause wherein John F. Ennis, administrator de bonis non of Joseph Zolkowski and others are complainants, and you and others are defendants, to show cause, if any there be, why the decree rendered in the above cause should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of said court, the 28th day of November, 1851.

Service acknowledged 3d Dec., 1851.

W. REDIN,
For defendants, Stott, Carrico, Smith, Ward, and Gideon.

Style of court.

DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the Monday of October, being the twentieth day of the same month, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

Present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlap, associate judges; Richard Wallach, esq., marshal; John A. Smith, clerk.

In the records of proceedings of the said court, amongst others are the following, to wit:

Parties.

JOHN F. ENNIS, adm'r de bonis non of Joseph Zolkowski and others,
against
J. B. H. SMITH, adm'r of Geo. Bomford, Lewis Johnson, adm'r de bonis non of Thadeus Kosciusko, James Carrico, Sam'l Stott, Geo. C. Bomford, and others.

Bill of complaint.

Be it remembered, that heretofore, to wit, on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and forty-eight, the said complainants, by Reverdy Johnson and Gaspard Tochman, esquires, their solicitors, filed in court here the following bill of complaint, in the form following, to wit:

To the honorable the judges of the circuit court, for the District of Columbia, in the United States, sitting in chancery, humbly complaining, show unto your honors:

Your orator, John F. Ennis, of the city of Washington, D. C., administrator de bonis non of the personal estates of Joseph Zolkowski, deceased, of John Zolkowski, deceased, of Isabella Wankowicz, deceased, of Caroline Zolkowski, deceased, of Bregida Zolkowski, deceased, of Anna Zolkowski, deceased, of Helena Zolkowski, by marriage Korosof, deceased; your orator, Samuel S. Williams, also of the city of Washington, D. C., administrator of the personal estates of Martina Estko, deceased, and of Stanislaus Estko, deceased; your orator Hippolitus Joseph Augustine Estko; your orator, Michael Szyma; your orator, Adam Bychowiec, son of Joseph; and your orator, Hippolitus Wankowicz, all of the late kingdom of Poland, now a province of Russia; and your orator, Vladislaus Wankowicz, late of the said kingdom of Poland, and now a resident of the city of Washington, D. C., in the United States, that Thadeus Kosciusko, (Kosciuszko,) a native of the late Grand Dutchy of Lithuania, in the kingdom of Poland, was, in his lifetime, and at the time of his death, possessed of a large estate in the United States of America, and in various parts of Europe; and being so possessed, and on a visit to the United States, he, the said Thadeus Kosciusko, (Kosciuszko,) on or about the 5th day of May, 1798, made and published in the United States a certain testamentary paper in writing, whereby he named the late Thomas Jefferson his executor, and bequeathed to him his whole personal property in the United States, for the uses and purposes therein mentioned; which testamentary paper was, after said Kosciusko's death, exhibited and admitted to probate, conditionally, in the orphan's court for the county of Washington, in the District of Columbia; and your orators pray that it be taken and considered as a part of this their bill of complaint.

Note.—"Exhibit A, copied in another part of this record on page ."

That afterwards, the said Thadeus Kosciusko, (Kosciuszko,) left this country and went to France, and resided there until the time of his death; and whilst in France, he, the said Thadeus Kosciusko, (Kosciuszko,) on or about the 28th June, 1806, made and published another testamentary paper in writing, bearing date of that day, whereby he in part revoked the first aforesaid testament, and bequeathed unto Kosciusko Armstrong, son of General John Armstrong, the sum of $3,704, as therein mentioned and set forth; which said last mentioned testamentary paper was, after the death of the said Thadeus Kosciusko, (Kosciusko,) exhibited and admitted to probate conditionally in the orphan's court of the county of Washington, in the District of Columbia, where it is now of record; and your orators pray that it be taken and considered as a part of this their bill.

Note.—"Exhibit B, copied on page ."

And your orators further show unto your honors, that afterwards, to wit, on or about the 4th day of June, 1816, the said Thadeus Kosciusko, (Kosciuszko) then being in Switzerland, made and published another testamentary paper, in writing, bearing date on that day, in and by which said testament he claimed then to be a resident of Berville, in France, and whereby, after making certain legacies to Thadea Emilie Wilchelmine Zeltner, Marie Charlotte Julie Margueritte Zeltner, and Bonnissant Pere, of the sum of one hundred thousand francs, which he directed should be charged upon and paid out of his estate in France, being then in the hands of Mr. Holtinzer, or any other estate, if that should not be sufficient for such purpose, he, said Thadeus Kosciusko, (Kosciuszko,) then revoked all former wills, testaments, and codicils which he had theretofore made; which said last mentioned testamentary paper is now in full force and unrevoked, except pro tanto as hereinafter mentioned, and has been exhibited and admitted to probate, and recorded in the said orphan's court for the county of Washington, in the District of Columbia; and your orators pray that it may be taken and considered as a part of this their bill.

Note.—"Exhibit C, copied on page ."

And your orators further show, that afterwards, to wit, on or about the 10th day of October, 1817, said Thadeus Kosciusko, (Kosciuszko,) then being in Switzerland, made and published another testamentary paper in writing, bearing date of that day, whereby he bequeathed his wardrobe, (effects,) his carriage and horse included, to Mr. and Mrs. Zavier Zeltner, a small box and all its contents to Miss Emilie Zeltner, and made certain other legacies amounting together to about 110,000 francs, which he directed to be paid over out of his funds, being then in England and in Switzerland, to certain General Baszkoyski, to said Miss Emilie Zeltner, to Mr. and Mrs. Edward Zeltner, and their children, to Mr. Zavier Amieth, whom he named the executor of said testamentary paper; to Miss Wagnery, daughter of the commandant of Morgues in Switzerland; to Dr. Schürer, and to Miss Ursula Zeltner, leaving, as your orators are advised and charge, his said testament of the 4th of

June, 1816, in full force and unrevoked, except as regards the said last mentioned legacies.

Note.—"Exhibit D, copied on page ."

Your orators further show and charge, that all the said legacies given by the wills of the 4th of June, 1816, and of the 10th of October, 1817, as aforesaid, have been fully paid and satisfied out of the funds therein specified, which said Thadeus Kosciusko (Kosciuszko) left in France, England, and Switzerland.

And they further show that said Thadeus Kosciusko (Kosciuszko) made no other will or testamentary paper of any kind whatever in relation to personal property; and that he departed this life intestate of his personal estate and property, in these United States, on or about the 15th day of October, 1817.

Your orators further show that the said Thadeus Kosciusko, (Kosciuszko,) in his lifetime, and after he had attained mature age, removed to France, and ever after claimed that country as his place of permanent residence, and resided there, except when temporarily absent; and although he died in Switzerland, his domicil at the time of his death was in France.

Your orators further show that said Thadeus Kosciusko departed this life unmarried and without issue; that he had a brother Joseph, who died before him, unmarried, intestate, and without issue; that he also had two sisters, Anna and Catharine; that his sister Anna married Peter Estko, and that she survived her husband and then died intestate, before the said Thadeus Kosciusko (Kosciuszko); that she had two children, to wit, Thadeus Estko and Stanislaus Estko; that her son Thadeus died before her; that he had three children who were alive at the death of their said uncle, Thadeus Kosciusko, viz., Roman Estko, Martina Estko, and Louisa Estko, by marriage Narbut, now widow; that Martina Estko hath since departed this life, to wit, in the year 1840, unmarried, intestate, and without issue; that Stanislaus Estko, son of the said Anna, survived his mother, said Anna Estko, and his uncle, said Thadeus Kosciusko, (Kosciuszko,) and departed this life in the year 1820, intestate, leaving one child, viz., your orator, Hippolitus Joseph Augustin Estko; and that the orphan's court for the District of Columbia granted letters of administration of the estates of said Martina Estko, and said Stanislaus Estko, deceased, to your orator, Samuel S. Williams.

Your orators further show unto your honors, that the said Catharine, second sister of said Thadeus Kosciusko, (Kosciuszko,) married a certain Charles Zolkowski, and survived her said husband, and died before her said brother, intestate; that she had seven children, all of whom, except Ignatius, survived her, and survived their said uncle, viz., Joseph, John, Ignatius, Caroline, Bregida, Anna, and Helena; that Joseph Zolkowski died unmarried and without issue, and left a will whereby he devised his share of the estate of said Thadeus Kosciusko, (Kosciuszko,) to be divided one-half to your orator, Michael

Szyrma, and the other half between your orators, Hippolitus Wankowicz and Vladislaus Wankowicz; that John Zolkowski married Elizabeth Bychowiec, survived her, and then died without issue, having previously assigned his share of said estate to your orator, Adam Bychowiec; that said Ignatius Zolkowski had one daughter, Isabella, who married Ignatius Wankowicz, by whom she had two children, your orators, Hippolitus Wankowicz and Vladislaus Wankowicz; that she survived her said husband, and also her said uncle, Thadeus Kosciusko, (Kosciuszko,) and died intestate; that said Carolina, Bregida, and Anna, daughters of said Catharine Zolkowski, died unmarried, intestate, and without issue; that said Helena, the fourth daughter of said Catharine Zolkowski, was married to a certain ——— Korosof, survived her said husband, and died intestate and without issue; and that said orphan's court for the District of Columbia, granted to your orator, John F. Ennis, letters of administration de bonis non of the estates of Joseph Zolkowski, John Zolkowski, Carolina Zolkowski, Bregida Zolkowski, Anna Zolkowski, Helena Korosof, born Zolkowski, and Isabella Wankowicz, deceased.

Your orators further show unto your honors, that by the laws of Lithuania, and also by the laws of France, in force at the time of the death of the said Thadeus Kosciusko, (Kosciuszko,) the succession to the whole of his said estate in this country was cast upon the descendants of his said sisters, representing the parents living at the time of his death. And your orators charge that they, together with the said Roman Estko and Louisa Narbut, born Estko, are entitled to the whole of the said personal estate, in proportions as aforesaid. But your orator, Hippolitus Joseph Augustin Estko, admits that a certain Catharine Estko, his aunt, at one time claimed his share thereof, although he avers that she hath now no right or claim to or interest in said share of said estate.

And your orators further show unto your honors, that the said Thos. Jefferson declined the executorship of the said first named testamentary paper, and that before the exhibition and probate of the said other testamentary paper, letters of administration cum testamento annexo of the estate of said Thadeus Kosciusko were granted by the said orphan's court to one Benjamin L. Lear, who entered upon the duties of said trust, but departed this life without having made any distribution of any part thereof; and that after his death, to wit, on or about the 28th day of December, 1832, administration de bonis non with the will annexed of the personal estate of the said Thadeus Kosciusko, (Kosciuszko,) was granted and committed by the orphan's court for Washington county, in the District of Columbia, unto a certain George Bomford, who entered into bond with security for the faithful performance of the said trust; that the several persons named as sureties in said first bond of said Bomford departed this life, and the said bond is now barred by statute of limitations; that after their deaths the said Bomford, as administrator as afore[said] *aforesaid*, at the instance of some of the complainants, and under the orders of said orphan's court, gave

two other bonds for the faithful performance of said trust, giving James Carrico, Samuel Stott, and George C. Bomford, as his sureties in one bond, and also giving Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, as his sureties in the other bond; which said two last mentioned bonds were duly executed, filed, and approved according to law, the one on the 7th day of May, 1846, and the other on the 4th day of January, 1847, and are in full force. Office copies whereof, under seal, are herewith filed, and your orators pray that the same may be taken and considered as parts of this their bill of complaint.

"*Note.*—Exhibit E, copied on page ."

Your orators further show, that said George Bomford, administrator de bonis non, as aforesaid, made and executed a certain deed of trust in the name of said Jonathan B. H. Smith, conveying to him all his property therein specified in trust to secure from losses some of those who became his sureties for the faithful performance of the duties of administrator of said Kosciusko's estate; which said deed of trust has been recorded in the books of record of Washington county, in the District of Columbia, on the 29th day of May, 1847, and your orators pray that it may be taken and considered as a part of this their bill.

(Exhibit G, copied in page .)

Your orators further show unto your honors, and charge it to be true, that the said George Bomford, administrator as aforesaid, possessed himself of a part of the said estate of the said Thadeus Kosciusko, of very large amount and value, to wit, of the value of about fifty-eight thousand dollars, which he used and converted to his own use; and that afterwards, to wit, on or about the 27th day of March, in the year eighteen hundred and forty-eight, he departed this life, insolvent, without having made distribution of any part of said Kosciusko's estate to or amongst your orators, or either of them, whereby, and by reason of the premises as your orators are advised, the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, have become and are liable to account to and with your orators, concerning the said estate so received by the said George Bomford in his lifetime, and to pay to your orators their respective portions whereof, with interest thereon as your orators may adjudge.

And your orators further show unto your honors, that after the death of said George Bomford, administration of his personal estate was granted and committed by the orphan's court for Washington county unto the aforesaid Jonathan B. H. Smith, and that administration de bonis non of the personal estate of said Thadeus Kosciusko, (Kosciuszko,) with the wills of 1798, 1806, and 1816, annexed, was granted by said court unto Lewis Johnson; of which three wills, the former two, viz., that of 1798, and that of 1806, have been revoked by that of 1816, in the form and manner heretofore stated.

Your orators further show, that they have frequently and in friendly manner applied to the said Jonathan B. H. Smith, administrator of Bomford's estate, as aforesaid, and Lewis Johnson, administrator de

bonis non of Kosciusko's estate, as aforesaid, and to the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, as sureties as aforesaid, to account to and with your orators of and concerning the personal estate of the said Thadeus Kosciusko, deceased, which came to the hands of the said George Bomford, as administrator as aforesaid, in his lifetime, and to pay to your orators their respective shares thereof; and your orators well hoped that said Jonathan B. H. Smith, as administrator as aforesaid, and the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, as sureties as aforesaid, or some of them, would have complied with such your orators' reasonable requests. But now so it is, may it please your honors, the said Jonathan B. H. Smith, administrator as aforesaid, and the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, have, and each of them hath, refused so to do; the said Jonathan B. H. Smith, as administrator as aforesaid, sometimes pretending that all of the estate left by the said Thadeus Kosciusko at the time of his death, and which had come to the hands and possession of the said George Bomford, as administrator as aforesaid, in his lifetime, was fully administered by the said George Bomford; and at other times pretending that the whole of said estate hath since passed into the hands of the said Lewis Johnson, as administrator de bonis non as aforesaid; and again, at other times, alleging that he, the said Jonathan B. H. Smith, as administrator as aforesaid, hath no assets of the estate of said George Bomford, wherewith to pay the whole amount so received and converted, or to pay your orators their respective proportions of the estate so received by the said George Bomford in his lifetime, and by him converted to his own use, as aforesaid; and the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, sometimes pretending that they are not liable to the extent of the said indebtedness of the said George Bomford; and at other times pretending that they are only liable in an action at law upon the said bonds; and again, that they are not liable until the proportions to which your orators are respectively entitled shall be settled and adjusted in a court of equity, after a settlement between the said administrator of the said George Bomford, and the said Lewis Johnson, administrator de bonis non of the said Thadeus Kosciusko, (Kosciuszko,) and a distribution of the funds received by the said administrator de bonis non. All which pretences are vain and are for the purpose of delay and procrastination, and to stave off the settlement of the estate of the said Kosciusko and payment to your orators of their respective shares thereof.

And your orators further show, and charge it to be true, that the said Ulysses Ward hath advertised all his property, and is about to make sale thereof, the better to defeat your orators' said claim.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises, except in this honorable court, where administrators and trustees may be compelled to discover, account for,

distribute, and pay over to the distributees of the deceased, the estate which may have come to the hands of such administrators and trustees, and where proper distribution may be made of the whole estate, in whose hands soever it may be, amongst all of the distributees of the deceased, and where equal justice may be done to and between the several sureties of the debtor, and the amounts to be paid by each, and by all of them, settled, adjusted, and ordered, and delays and multiplicity of actions at law and in equity avoided, &c.; and to the end that the said Jonathan B. H. Smith, as administrator of the said George Bomford, and trustee as aforesaid, and Lewis Johnson, as administrator de bonis non of the said Thadeus Kosciusko, may answer this bill, and set forth and declare what estate and funds each of them has in his possession, or under his control, belonging to the estate of said Thadeus Kosciusko, deceased, and whence and from whom derived, and of what it consists; and that the said Jonathan B. H. Smith, as administrator and trustee of the said George Bomford, may set forth and declare what estate, or funds belonging to the estate, of said Kosciusko, were in the hands of said Bomford at the time of his death, and what hath since become of the same, and also what estate he hath of the said Bomford; and that the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, may answer and say whether they entered into bonds as aforesaid, as sureties for the said George Bomford as aforesaid; and that the said Roman Estko, and Louisa Narbut, born Estko, Catharine Estko, Thadea Emilie Wilchelmine Zeltner, Marie Charlotte Julie Margueritte Zeltner, and Bonnissant, père, Gen. Baszkoyski, Miss Emilie Zeltner, Mr. and Mrs. Edward Zeltner, Zavier Amieth, administrator as aforesaid, Miss Wagnery, Dr. Schürer, and Miss Ursula Zeltner, may answer the premises; and that, by decree of this court, the said Jonathan B. H. Smith, as administrator and trustee of the said George Bomford, and the said James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, as sureties as aforesaid, may be compelled to account before this honorable court of and concerning the estate of the said Kosciusko, which came to the hands of the said George Bomford, as administrator as aforesaid, and to bring the same, with all interest due thereon, into this court, there to be deposited until distribution thereof can be made, under the order of this court, amongst your orators and others entitled thereto; and that such distribution be made, &c.; and that the said Lewis Johnson may account for and set forth the estate in his hands, and that the same be sold, and the proceedings thereof brought into this court and distributed as aforesaid, &c.; and that the said Ulysses Ward may, by injunction, be restrained from selling or making away with his property, &c.; and that your orators may have such other and further relief as the nature and circumstances of their case may require, &c. May it please your honors to grant unto your orators the writ of subpœna of the United States, directed to the said Jonathan B. H. Smith, as administrator and trus-

tee of said George Bomford, Lewis Johnson, administrator de bonis non of the said Thadeus Kosciusko, James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, sureties as aforesaid, all of the county of Washington, in the District of Columbia, commanding them, and each of them, to be and appear in this honorable court on a certain day, and under a certain pain, then and there to answer, &c., and also a writ of injunction as aforesaid against said Ulysses Ward.

And may it also please your honors to grant unto your orators an order of publication, in the usual style, against the said absent defendants, Roman Estko, Louisa Narbut, born Estko, Thadea Emilie Wilchelmine Zeltner, Marie Charlotte Julie Margueritte Zeltner, Bonnissant Pére, General Baszkoyski, Emilie Zeltner, Mr. and Mrs. Edward Zeltner, Zavier Amieth, executor as aforesaid, Miss Wagnery, Dr. Schürer, and Miss Ursula Zeltner, all of whom reside out of the limits of the United States, in foreign parts, warning them to appear in this court and answer by a certain day, &c., or this bill will be taken pro confesso against them, &c.

And, as in duty bound, your orators will ever pray, &c.

REVERDY JOHNSON and
G. TOCHMAN,
Solicitors for complainants.
T. PARKIN SCOTT,
Solicitor for John F. Ennis, administrator, and Saml. S. Williams, administrator.

CITY AND COUNTY OF WASHINGTON,
District of Columbia, to wit:

Be it remembered, that on this 26th day of September, 1848, before me, Thos. Donoho, justice of the peace of the aforesaid county, in the district of Columbia, personally appeared Vladislaus Wankowicz, one of the complainants to the aforegoing bill, who, after being duly sworn, and according to law, on the holy evangely of Almighty God, says, that the facts stated in the bill, as of his own knowledge, are true as there stated; and he verily believes, that the facts therein stated as derived from others are true as there stated.

THOS. DONOHO, *J. P.*

Exhibits referred to in the aforegoing bill of complaint:

Will of 1798.

Exhibit A.—Will of 1798.

I, Thadeus Kosciuszko, being just in my departure from America, do hereby declare and direct that, should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend, Thomas Jefferson, to employ the whole thereof in purchasing negroes, from among his own or any others, and giving them liberty in

my name; in giving them an education, in trades or otherwise; and in having them instructed, for their new condition, in the duties of morality, which may make them good neighbors, good fathers or *moders*, husbands or wives; and, in their duties as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful; and I make the said Thomas Jefferson my executor of this.

T. KOSCIUSZKO.

5th day of May, 1798.

At a superior court of law, held for Albemarle county, the 12th day of May, 1819, this instrument of writing, purporting to be the last will and testament of T. Kosciusko, deceased, was produced into court; and, satisfactory proof being produced of its being written entirely in the handwriting of the said Thadeus Kosciuszko, the said will is ordered to be recorded; and thereupon Thomas Jefferson, the executor therein named, personally appears in court, and refuses to take upon himself the burden of the execution of the said will.

Test: JOHN CARR, *Clerk*.

Virginia, Albemarle, superior court office, to wit:

I, Alexander Garrett, clerk of the superior court of law for the said county of Albemarle, do hereby certify, that the above is a true copy of the original will of Thadeus Kosciusko, deceased, of record of my office, as likewise the order of court thereupon, attested by John Carr, then clerk of said court.

In testimony whereof I have hereunto set my hand, and caused the seal of my office to be hereunto affixed, this tenth day of January, one thousand eight hundred and twenty, and of the 44th year of the commonwealth. [SEAL.]

ALEXANDER GARRETT, *C. C.*

VIRGINIA, ALBEMARLE COUNTY, *to wit:*

I, Archibald Stuart, duly allotted judge of the eighth circuit, composed of the counties of Bath, Rockbridge, Augusta, Amherst, Nelson, and Albemarle, do hereby certify, that Alexander Garrett, whose signature is annexed to the within certificate, is clerk of the superior court of law for Albemarle county, duly appointed and qualified as such; and that his certificate is in due form of law.

Given under my hand and seal, this 23d day of January, 1820.

ARCHIBALD STUART. [SEAL.]

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 26th day of September, in the year 1848.

[SEAL.]

ED. N. ROACH,
Register of Wills.

Will of 1806.

Exhibit B. Will of 1806.

Know all men by these presents, that I, Thade. Kosciuszko, formerly an officer of the United States of America in their Revolutionary war against Great Britain, and a native of Lithuania, in Poland, at present residing at Paris, do hereby will and direct, that, at my decease, the sum of three thousand seven hundred and four dollars, currency of the aforesaid United States, shall of right be possessed by, and delivered over to the full enjoyment and use of Kosciusko Armstrong, the son of General John Armstrong, minister plenipotentiary of the said States at Paris. For the security and performance whereof I do hereby instruct and authorize my only lawful executor in the United States, Thomas Jefferson, President thereof, to reserve in trust for that special purpose, of the funds he already holds belonging to me, the aforesaid sum of three thousand seven hundred and four dollars in principal, to be paid by him, the said Thomas Jefferson, immediately after my decease to him, the aforesaid Kosciusko Armstrong; and, in case of his death, to the use and benefit of his surviving brothers.

Given under my hand and seal, at Paris, this twenty-eighth day of June, one thousand eight hundred and six.

THADE. KOSCIUSZKO. [SEAL.]

In presence of—
CHARLES CARTER,
JAMES M. MORRIS.

Commercial agency of the United States, Paris.

On this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and six, and of the independence of the United States of America [the] thirtieth, before the undersigned, commercial agent and agent of prize causes for the United States of America at Paris, personally appeared Thade. Kosciusko, late officer of the said United States, who, in his presence, signed and sealed the foregoing transfer in favor of Kosciusko Armstrong, the son of General John Armstrong, minister plenipotentiary of the United States at Paris, and in case of his death to the use and benefit of his surviving brothers; and did acknowledge it as his own act and deed for the purpose therein specified.

In testimony whereof, he, the said undersigned as aforesaid, has hereunto signed his name, and affixed his seal of office, at Paris, the day and year above written.

FULWAR SHIPWITH. [L. S.]

ORPHAN'S COURT, WASHINGTON COUNTY,

District of Columbia, to wit:

Be it remembered, that on the 26th day of September, in the year 1827, Richard Forrest, of the county and district aforesaid, made oath on the holy evangely of Almighty God, that he is well acquainted with the handwriting of Fulwar Shipwith, late United States commercial agent at Paris, having often seen him write; and that he verily believes the signature "Fulwar Shipwith," to the certificate to the annexed instrument of writing, purporting to be the will of Thade. Kosciusko, is the proper handwriting of said F. Shipwith; and that he believes the seal attached to said certificate, is the official seal of the United States consulate at Paris.

Sworn in open court.

Teste: HENRY C. NEALE,
Register Wills.

And now, on this 8th day of May, in the year 1828, in the orphan's court of Washington county, and district aforesaid, Joseph C. Cabell, of Nelson county, in the State of Virginia, makes an oath on the holy evangels of Almighty God, that he is well acquainted with the handwriting of Charles Carter, one of the subscribing witnesses to the annexed paper, purporting to be the will and testament of Thade. Kosciusko, deceased, having often seen him write; and that he verily believes the signature "Charles Carter," as witness to said will, to be the proper handwriting of said Charles Carter, now deceased; and that he is well acquainted with the handwriting of Fulwar Shipwith, late commercial agent of the United States at Paris, having often seen him write; and that he verily believes the signature "F. Shipwith," to the annexed certificate to the instrument of writing purporting to be the will of Thade. Kosciusko, is the proper handwriting of the aforesaid Fulwar Shipwith, who now resides near Baton Rouge, Mississippi.

Teste: HENRY C. NEALE,
Register Wills.

DISTRICT OF COLUMBIA,

Washington county, to wit:

The 19th day of November, 1828, James M. Morris, one of the subscribing witnesses to the aforegoing instrument in writing, purporting to be the last will and testament of Thadeus Kosciusko, deceased, made oath on the holy evangels of Almighty God, that he did see the testator, therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with Charles Carter, the other subscribing witness, respectively subscribed their names as *as* witnesses to this will, in the pres-

ence, and at the request of the testator, and in the presence of each other.

Sworn in open court.

Teste: HENRY C. NEALE,
Register Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills, for Washington county aforesaid.

Witness my hand and seal of office, this 26th day of September, in the year 1848.

[SEAL.] ED. N. ROACH, *Reg'r Wills.*

Will of 1816.

Exhibit C. Will of 1816.

Ceci est mon testament.

Je, soussigné, Thadée Kosciuszko, demeurant à Berville, commune de la Genevraye, department de Seine et Marne, étant actuellement à Soleure en Suisse.

Ne voulant pas être prévenu par la mort, sans avoir fait connaitre mes dernières dispositions, j'ai fait le présent mon testament et ordonnance de dernière volonté entièrement écrit de ma main, ainsi qu'il suit:

Voulant donner aux demoiselles Zeltner, filles de Mons. Pierre Joseph Andre Louis Zeltner, proprietaire demeurant au dit Berville, commune de la Genevraye près Fontainbleau, et de deffunte Madame Angelique Charlotte Adelaide Drouyen de Vodeuille de Shuys, des preuves de l'amitié que j'ai pour elles, et réconnoitre en leurs personnes les sentiments d'estime et les soins d'amitié que j'ai reçus de leur part et de celle de leurs père et mère pendant quinze années que j'ai demeuré avec eux, et assurer aux dites demoiselles des établissements convenables.

Je donne et légue à Mademoiselle Thadée Emilie Wilchelmine Zeltner, ma filleule, agée deprès de seize ans, née à Paris le vingt messider, an huit, correspondant au neuf Juillet, mil huit cen, la somme de soixante mille francs, une fois payée, au litre, cours et valeur actuelle de France. Je donne et légue également à Demoiselle Marie Charlotte Julie Marguerite Zeltner, fille ainée des dites Sieur et Dame Zeltner, née à Soleure en Suisse le vingt-six May, mil sept cent quatre-vingt-seis, la somme de trente cinq mille francs, aussi une fois payée au même litre, cours et valeur.

Lesquelles deux sommes faisant ensemble quatre vingt quinze mille francs, porteront intérêt au taux légal à compter du jour de mon décès sans qu'il soit besoin d'enformer demande en justice et seront à prendre ainsi que les dits intérêts sur les plus clairs biens mobliers et immo-

biliers que m'appartiendrent au jour de mon décès, notamment et par préference sur les fonds en numeraire de ma succession qui pourront se trouver en France, soit entre les mains de Mon. Hollinger, mon banquier à Paris, soit entre les mains de tous autres banquiers, debiteurs ou depositeurs de sommes ou effets m'appartenant; laquelle somme sera reçue et touchée après mon décès par mon exécuteur et testamentaire ci-après nommé, et par lui remises aux dites Demoiselles Zeltner, si elles sont mariées; mais si elles ne sont pas mariées, je le charge de paier la dite somme dans les mains d'une ou plusieurs personnes de la manière qui lui paraitra la plus sure et la plus avantageuse, les intérêts ou produits des sommes ainsi placées seront touchées annuellement par mon dit exécuteur testamentaire sur sa quittance, et par lui remis à chacune des dites Demoiselles Zeltner, pour qui lui en appartiendra et pour servir à leur entretien jusqu'à leur etablissement par mariage.

Je veux et entends que les dites Demoiselles Zeltner ne puissent anciemment toucher ni disposer de tout ou de partie des sommes si dessus léguées, tant qu'elles seront dans le célibat, mais une fois mariées chacune d'elles aura la libre disposition de la somme à elle léguée, et mon exécuteur testamentaire déchargé du soin de toucher et de leur rémetra l'intérêt annuel qu'elles pourront alors toucher elle même directement.

Je nomme pour l'exécuteur de mon présent testament Mr. Bonnissant, père, notaire à Morch, department de Seine et Marne, le prierent de vouloir bien prendre cette peine et d'accepter pour *diamant* et pour gage de mon amitié, la somme de cinq mille francs, que je lui donne et légue par le présent, laquelle sera également à prendre sur le plus clairs biens de ma succession et notairement sur les fonds en numeraire qui pourront se trouver soit entre les mains de Mr. Hottinger, soit ailleurs aucune c'ait ci-dessus dit.

Je revoque tous les testamens and codiciles que j'ai pu faire avant le présente auquel seul je m'arrête comme contenant mes dernieres volontés.

Fait à Soleure en Suisse, le quatre Juin, mille hui cent seize.

THADEÉ KOSCIUSZKO.

Au bas est écrit.

Signé ne varietur au desir de notre procès verbal de constat d'aujourd'hui trente-un Octobre, mil huit cent dix-sept, par nous, président du tribunal de l'arrondissement de Fontainebleau, Mr. Bonnissant, notaire, et le commis. Greffier.

Au bas est écrit.

Enregistré à Fontainebleau le trente-un Octobre, mil huit cent dix-sept, fo. 86, Vo. Rl. cinq francs, cinquante centimes, et pour timber un franc vingt-cinq centimes.

(Signé) BAILLY, f.

Il est ainsi, en l'original du testament olographe de Mr. Thadée Kosciuszko mis au *vemg* des minutes de Mr. Benard, prédécesseur immediat du notaire saussigné, suivant acte du dépot dressé par lui, le quatre Novembre, mil huit cent dix-sept, en vertu de l'ordonnance de Mr. le Président du tribunal de Fontainebleau, en date du trente-un October, mil huit cent dix-sept, expedition et ses présens ont été expediées liberallement et collationnées sur l'original du d. testament par Mr. Bouchonnet, notaire à Fontainebleau soussigné, qui l'a en sa possession comme successeur du d. Mr. Benard.

BOUCHONNET C. [Seal of the notary.]

Vu pour legalisation de la signature de Mr. Bouchonnet, notaire, par nous, juge du tribunal civil de 1er. suit de Fontainbleau par l'emploiment du president à Fontainebleau le dix *peut* S'bre, 1846.

G. BOUCHEREAU. [Seal of the trib. of Fontainbleau.]

Vu pour legalisation de la signature de Mor. Rochereau, juge du tribunal de Fontainebleau, Paris, 30 S'bre, 1846, par delegation. Le chef du bureau au ministre de la justice.

LANDY. [Seal of the minister of the department of justice.]

Le ministre des affaires étrangeres certifie, veritable *las quature* accentre de Meur. Landy, Paris, le O'bre, 1846, par autorisasion du ministre. Le chef du b'ea de la chancellerie.

DE LAMARRE. [Seal of the minister of the department of foreign affairs.]

Certifie veritable la signature à deprès de M. De Lamarre, de ministre de France.

A. PAGEOT.

In the orphan's court for the county of Washington and District of Columbia, the paper purporting to be a copy of a will executed by Thaddeus Kosciusko, hereto annexed, being presented for record by the counsel of Estkos and others claiming to be the next of kin of said Kosciusko; Leopold Dorillius being first duly sworn according to law, *an* answer to the following interrogatories, to wit:

1. Are you not a native of France, and if so were you or not educated as a notary in that country?

2. In the course of such an education is it necessary to acquire a competent knowledge of the law relative to the execution, proof, and recording or registration of wills?

3. If you have had occasion to acquire knowledge of the law relating thereto, please to state what the law of France is as to the execution, proof, and recording or registration of olograph wills in that country.

4. Please to look at the paper now shown to you, marked A, and state whether a will such as that contained in said paper would or not

under that law require the attestation of witnesses; whether it would or not be recorded or registered, and when; and whether or not the paper is so authenticated as to be admissible in evidence in the courts of France.

Says:

1. I am a native of France; studied law to be a notary in Paris.

2. Law requires it.

3. Having studied the law to be a public notary as aforesaid, I have acquired the knowledge thereof; that law requires that an olograph will be presented to the president, after the death of the testator, to the president of the tribunal of the domicil of the testator, and when it is proven before him, it is then registered and deposited for safe keeping in the archives of the public notary appointed by the president.

4. This will is the form of olograph will, and the law does not require any witnesses to such a will; it is enough when it is neither signed and dated by the testator himself, and the copy presented to me shows that all the necessary formalities have been performed; it is an exemplification made from the original will by a public notary who keeps the original in his custody, and it would be received as an evidence in all the courts in France; as to the registration, it should be registered as answered before.

Washington, the twelve of January, 1847.

LEOPOLD DORILLIUS.

Test:

ED. N. ROACH, *Reg. of wills.*

DISTRICT OF COLUMBIA,
Washington county orphan's court.

The counsel for the Estkos and others claiming to be the next of kin of Thaddeus Kosciusko, deceased, appear in open court this 8th day of January, 1847, and present for record attested copy of the record of the will of said Thaddeus Kosciusko, executed on the 4th day of June, 1816, and thereupon it is ordered by the court that notice of the filing of said copy of said record for record in this court be given to George Bomford, administrator de bonis non of said Thadeus Kosciusko, with the will annexed, and that he show cause, if any he hath, on or before Tuesday, the 12th day of January inst., why the said copy of the said record shall not be admitted to record in this court.

NATH'L P. CAUSIN.

And now, on this 12th day of January, 1847, the said counsel for the persons claiming to be the next of kin of said Kosciusko appear, and it appearing to the satisfaction of this court, that George Bomford, administrator as aforesaid, is absent from this country, and that the said notice to appear and show cause was duly served on J. B. H. Smith, esq., counsel of said George Bomford, and the said Bomford not appearing in person or by attorney, it is ordered by the court, that the

deposition of Leopold Dorilliers be taken in open court, and annexed to the said attested copy of said record, and the same is done; and afterwards, on the same day, the said J. B. H. Smith, esq., appearing in court, and objecting to the want of time, the said notice to show cause is hereby enlarged and extended to Friday, the 15th day of January, 1847.

NATHANIEL POPE CAUSIN.

And now, on this 15th day of January, 1847, the said counsel for the said next of kin of said Kosciusko appear, and the said George Bomford does not appear in person or by attorney; and this court being satisfied that the said copy of said record is duly authenticated and proven according to the statutes in such case made and provided, does on this 15th day of January, 1847, order that the said attested copy of the record of the will of Thaddeus Kosciusko, executed on the 4th day of June, 1816, be recorded among the records of this court.

NATHANIEL POPE CAUSIN.

On this 19th day of January, 1847, Gaspard Tochman, esq., one of the counsel of the next of kin of Thadeus Kosciusko, pursuant to the order of this court, filed a translation of the record of the will aforesaid, and took oath in open court, that the said translation so filed by him is true and correct.

Whereupon the court ordered, that said translation be entered on the record of the wills proved, together with the aforesaid French record of the said will of Thadeus Kosciusko.

NATHANIEL POPE CAUSIN.

This is my will:

I, the undersigned, Thadeus Kosciusko, residing at Berville, in the township of Genevraye, department of Seine and Marne, being at present at Soleure, in Switzerland.

Not wishing to be overtaken by death before having made known my last disposals, I have made this my will and declaration of my last intentions, written entirely with my own hand, as follows:

Desiring to give to Misses Zeltner, daughters of Mr. Peter Josephus Andrew Louis Zeltner, proprietor, residing at said Berville, township of Genevraye, near Fontainbleau, and of the late Mrs. Angelique Charlotte Adelaide Drongu de Vandeil de Shuys, proofs of the friendship which I bear for them, and to acknowledge towards them the sense of my esteem for the friendly attention which I received from them, and from their father and mother, during fifteen years of my living with them, and to secure for the said young ladies suitable settlement, (établissemens:)

I give and bequeath to Miss Thadea Emilie Welchelmine Zeltner, my god daughter, aged nearly sixteen years, born at Paris, the 20th Messidor, in the eighth year, corresponding with the 9th day of July,

1800, the sum of 60,000 francs, to be paid at once, in the standard currency and value of France.

I give and bequeath to Miss Marie Charlotte Julie Margueritte Zeltner, eldest daughter of Mr. and Mrs. Zeltner, corer at Soleure, in Switzerland, on the 26th day of May, 1796, the sum of 35,000 francs, likewise to be paid at once in this same standard currency and value.

Which two sums, making together ninety-five thousand francs, shall bear the interest at legal rate from the day of my death, without it being necessary to demand the same judicially, and shall be taken, as well as the interest aforesaid, out of the most unincumbered real and personal property belonging to me on the day of [my] death, particularly, and by preference, out of the money funds of my estate, which may be found in France, either in the hands of Mr. Hottinger, my banker, at Paris, or in the hands of my other bankers, debtors, or holders of moneys or effects belonging to me; which sums shall be recorded and collected after my death by my testamentary executor, hereinafter named, and by him remitted to said Misses Zeltner, when they be married; but if they are not married, I direct him to invest the sums aforesaid in the hands of one or several persons, in the manner which to them shall seem to be the safest and the most profitable; the interest or proceeds arising from the sums so invested shall be collected annually by my said testamentary executor upon his receipts, and by him remitted to each of said Misses Zeltner, in the amount due to each of them, for their maintenance until their marriage.

I wish and intend that the said Misses Zeltner shall not receive nor dispose, neither of the whole nor of a part of the sums above bequeathed, as long as they shall be single; but once married, each of them shall have the free disposal of the sum bequeathed to her; and my testamentory executor shall be discharged from the duty of receiving and remitting to them the annual interest, which they may then collect themselves directly.

I appoint Mr. Bouissard, père, notary at Morcu, department of Seine and Marne, executor of this my will, begging him to be so kind as to take that trouble, and to accept, as token and pledge of my friendship, the sum of 5,000 francs, which I give and bequeath to him by this present; which sum shall be likewise taken out of my most unencumbered estate, and particularly out of any money funds which may be found in the hands of Mr. Hottinger, or elsewhere, as aforesaid.

I revoke all the wills and codicils which I may have made previous to the present, to which alone I confine myself, as containing my last wishes.

Done at Soleure, in Switzerland, on the fourth day of June, 1816.

THADEE. KOSCIUSZKO.

Below it is written—

Signed "ne varietur," pursuant to our process of deposition of probate (procès verbal de constat) of this day, the 31st of October, 1817,

by us, president of the tribunal of the circuit of Fontainbleau, Mr. Bonnissant, notary, and the commis'y officer.

Below it is written—

Recorded at Fontainbleau, on the 31st day of October, 1817, page 86, vo.

Received five francs fifty centimes, and for the stamp one franc twenty-five centimes.

(Signed) BAILLY.

It is so on the original of the ologaph will of Mr. Thadeus Kosciusko, deposited on the file of the minutes of Mr. Bernard, the immediate predecessor of the undersigned notary, according to the act of deposition thereof, made by him on the fourth day of November, 1817, pursuant to the order of the tribunal of Fontainbleau, dated the 31st of October, 1817.

And this present exemplification (expedion) *have* been taken word for word from, and verified with, the original of the said will, by Mr. Bouchonnet, notary, at Fontainbleau, undersigned, who has it in his possession as the successor of Mr. Bernard.

[Seal of notary.] BOUCHONNET.

Seen, for the legalization of the signature of Mr. Bouchonnet, notary, by us, judge of the tribunal of the 1st instance, at Fontainbleau.

[Seal of the tribunal of Sentainal.] For the president, at Fontainbleau, Sept. 19, 1836.

ROCHEREDER.

Seen for the legalization of the signature of Mr. Rochereder, judge of the tribunal of Fontainbleau. Paris September 30, 1836.

[Seal of the minister of justice.] By delegation the chief of the office of the minister of justice.

J. LANDY.

The minister of foreign affairs certifies the signature on the side of Mr. Landy as true.

[Seal of the minister of foreign affairs.] Paris, October 1, 1836. By authority of the minister, the chief of the office of chancellerie.

DE LAMARRE.

City of Paris, *Kingdom of France*.

The undersigned, consul of the United States of America for the city of Paris, do hereby certify, that the signature of De Laman to this instrument is to me well known to be truly that of Mons. De Laman, chief of the department of foreign affairs of this kingdom of France, and that, to all acts by him so signed, full faith and credit are due in court and thereout.

In testimony whereof I have hereunto set my hand and seal of office, this seventh day of October, in the year of our Lord 1836.

[L. S.] ROBERT WALSH,

U. S. consul.

[I] certify, that the aforegoing is a true translation of the record of the will which General Thadeus Kosciusko made and executed on the 4th day of June, 1816.

GASPARD TOCHMAN.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true *copies* from the original, filed and recorded in the office of the register of wills, for Washington county aforesaid.

[Seal of orphan's court.] Witness my hand and seal of office, this 23d day of January, in the year 1847.

ED. N. ROACH, *Reg'r wills.*

Will of 1817.

Exhibit D. Kosciusko's testament of 1817.

Translation by John Holmes Offley.

I, the undersigned, General Thadeus Kosciusko, dispose of my property after my death, by this my will, as follows:

1st. I bequeath of my funds, of which I have to dispose in England, in the hands of Messrs. Thompson, Bonards & Co., the one-half to General Baszkoyski; the other half, amounting to about fifty thousand francs of France, I bequeath to Miss Emilie Zeltner, daughter of Mr. Zavier Zeltner, ex-prefect of this canton, upon the condition that, with the exception of the interests, neither she nor her parents shall dispose of the capital before her marriage.

2d. I bequeath all my effects, (effets,) my carriage and my horse included, to Madam and to Mr. Zavier Zeltner, above named.

3d. I bequeath of my funds at my disposal, in the hands of Mr. Kaspas Escher, at Zurich, the sum of three thousand francs of France to Madam Zeltner, wife of Mr. Edward Zeltner, formerly merchant of this city, and to his children. I bequeath of the residue of these funds, amounting to about three thousand francs of France, two thousand francs or more, if there should be more, to be distributed to the poor, and one thousand francs for the expenses of my burial, upon the condition that I shall be carried by the poor.

4th. I bequeath of my funds of five thousand francs of France, at my disposal in the hands of Mr. Bettin, merchant of this city, two thousand francs of France to Mr. Zavier Amieth, notary of this city, whom I appoint as executor of this my will. I bequeath, of these funds, two thousand francs of France to Miss Wagnery, daughter of the commandant of Morgues. I bequeath five hundred francs of France to my doctor, Mr. Schürer; two hundred francs of France gratification to my servant; and the residue of these funds to Miss Ursula Zeltner, daughter of M. le Prefet Zeltner, aforementioned.

5th. I bequeath my small box, (casette,) and all that it shall contain, as the property of Miss Emilie Zeltner aforenamed.

6th. I beg the notary, Zavier Amieth, to cause to be burned, after my demise, all my papers written in the Polish language.

Executed and passed at Soleure, this tenth day of October, one thousand eight hundred and seventeen, (1817.)

(Signed) KOSCIUSZKO.

No. 3166. This document, seen at the consulate general of the United States of America, Switzerland, and hereby authenticated.

Basle, May 16, 1840.

[L. s.] (Signed) STEPHEN POWERS,
Consul general for Switzerland.

Note by the translator.

The first four pages in German contain certificates, &c., that the annexed will was duly deposited in the proper office, and that it was opened by the individuals legally authorized to do so, &c., &c.; no part of his will proper is in German.

The latter part in German—first, is a declaration by the witnesses that the will of Kosciusko was signed by him in their presence, and declared to be his last will and testament; and the last paragraphs are merely certificates of the correctness of the copies, &c., &c.

The authenticated copy of the foregoing will is filed in the case No. 125 of the chancery docket of this court.

G. TOCHMAN,
Solicitor.

Exhibit E and F, administration bonds.—Administration bond of Geo. Bomford, 7th May, 1846.

Exhibit E.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Know all men by these presents, that we, George Bomford, James Carrico, Samuel Stott, and George C. Bomford, of Washington county, in the District of Columbia, are held and firmly bound unto the United States of America, in the full sum of twenty thousand dollars, current money of said States, to be paid to the said United States, their certain attorney, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, in and for the whole, jointly and severally, firmly by these presents. Sealed with our seals and dated this seventh day of May, in the year of our Lord one thousand eight hundred and forty-six.

Whereas the above bounden George Bomford hath heretofore taken out from the orphan's court of Washington county, in the District of Columbia, letters of administration, with the will annexed, on the per-

sonal estate of Thadeus Kosciusko, late of , deceased; and whereas the Congress of the United States at its present session has passed an act authorizing the said orphan's court under certain circumstances to require administrators, &c., to give additional security; and whereas the said court hath required the said Bomford to give additional security in the sum of $20,000, as administrator of said Kosciusko.

The condition of the above obligation is such, that if the above bounden George Bomford shall well and truly perform the office of administrator, with the will annexed, of the said Thadeus Kosciusko, deceased, according to law, and shall in all respects discharge the duties of administrator required by law, as administrator aforesaid, without any injury or damage to any person interested in the faithful performance of the said office, then the above obligation shall be void; it is otherwise to be in full force and virtue in law.

GEO. BOMFORD, [SEAL.]
JAS. CARRICO, [SEAL.]
SAM'L STOTT, [SEAL.]
GEO. C. BOMFORD. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. V. MOORE,
To the signatures of Geo. Bomford and James Carrico.
WM. W. DAVIS,
To the signature of Samuel Stott.
J. B. H. SMITH,
As to G. C. Bomford.

I am of opinion that this bond is fully sufficient for the amount mentioned in the same.

J. B. H. SMITH.

May 8th, 1846.

Exhibit F.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Know all men by these presents, that we, George Bomford, Jacob Gideon, Ulysses Ward, and J. B. H. Smith, of Washington county, in the District of Columbia, are held and firmly bound unto the United States of America, in the full sum of forty thousand dollars, current money of said States, to be paid to the said United States, their certain attorney, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, in and for [the] whole, jointly and severally, firmly by these presents. Sealed with our seals and dated this fourth day of January, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas the above bounden George Bomford hath taken out from the orphan's court of Washington county, in the District of Columbia, letters of administration de bonis non on the personal estate of Thadeus Kosciusko, late of Poland, deceased:

The condition of the above obligation is such, that if the above bounden George Bomford shall well and truly perform the office of administrator de bonis non of said Thaddeus Kosciusko, late of Poland, deceased, according to law, and shall in all respects discharge the duties of administrator de bonis non required by law, as administrator aforesaid, without any injury to any person interested in the faithful performance of the said office, then the above obligation shall be void; it is otherwise to be in full force force and virtue in law.

GEO. BOMFORD, [SEAL.]
JACOB GIDEON, [SEAL.]
U. WARD, [SEAL.]
J. B. H. SMITH. [SEAL.]

Signed, sealed, and delivered in the presence of GEO. S. GIDEON, as to Bomford, Gideon, and Smith; and as to U. Ward, THO. CARBERY.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing are true copies from the originals filed and recorded in the office of the register of wills, for Washington county aforesaid.

[Seal of orphan's court.] Witness my hand and seal of office, this 18th day of May, in the year 1847.

ED. N. ROACH, *Reg'r will.*

Exhibit G.

George Bomford to J. B. H. Smith.

Deed of trust recorded 29th May, 1847, in liber W. B., No. 134, folios 34, 35, and 36 and 37, one of the land records of Washington county, in the District of Columbia.

This indenture, made this thirteenth day of January, in the year of our Lord one thousand eight hundred and forty-seven, between George Bomford, of the first part, and J. B. H. Smith, of the second part, both of the city of Washington, D. C.

Witnesseth: Whereas Jacob Gideon, Ulysses Ward, and the said J. B. H. Smith, have become the sureties of the said George in his bond to the United States, dated the 4th January, 1847, in the penalty of forty thousand dollars given for the faithful performance of his duties as the administrator de bonis non with the will annexed of Thaddeus Kosciusko; and whereas the said George is desirous of fully securing his said sureties from all loss on account of said suretyship, or on account

of the failure of the said George faithfully to discharge all his duties as said administrator:

Now, therefore, this indenture witnesseth, that the said George Bomford, for and in consideration of the premises, and the sum of ten dollars to him in hand paid by the said Smith at and before the ensealing and delivery of these presents, the receipt whereof is hereby fully acknowledged, hath given, granted, bargained, and sold, aliened, enfeoffed, released, assigned, and confirmed, and doth hereby give, grant, bargain, and sell, alien, enfeoff, release, assign, confirm, and convey, unto the said J. B. H. Smith and his heirs, all the following property, lying and being in the city of Washington, and District of Columbia, and all his right, title, and estate therein or any part thereof, and as the same is designated upon the public plots of said city, that is to say, all the lots and improvements thereon which he owns in the following squares, to wit, in squares numbered respectively two (2) five (5) seventeen (17) sixteen (16) twenty-eight (28) thirty-two (32) forty (40) fifty-four (54) fifty-five (55) one hundred and sixteen (116) one hundred and fifty-four (154) one hundred and sixty-nine (169) one hundred and ninety-seven (197) one hundred and ninety-eight (198) one hundred and ninety-nine (199) two hundred and fourteen (214) two hundred and sixteen (216) two hundred and thirty-eight (238) two hundred and forty-five (245) two hundred and eighty-one (281) and three hundred and sixty-one (361.) Also lot number six and part of lot number seven, in square number one hundred and forty-one, and part of lot number six in square number seventy-eight, being the property sold to said Bomford by William Redin, trustee, for the sale of J. Nourse's property, also the part of lot number two, owned by said Bomford in square number four hundred and twenty-seven, and lots No. 13 and 14 in square south of square No. 104, and also lots numbered one, two, three, four, five, and six, of subdivision in square number one hundred and eighty-five, and lot numbered twenty-one, and part of lot number twenty-two in square number two hundred and fifty-two, (the last two pieces of property subject to a prior deed of trust.)

To have and to hold the said pieces of property, together with all and singular ways, alleys, rights, privileges, buildings, improvements, and appurtenances unto the same belonging, and the interest, title, and estate of the said George therein unto, and to the use of the said J. B. H. Smith, his heirs and assigns; in trust nevertheless, for the following uses and purposes, that is to say, in the first place to fully secure and indemnify the said Gideon, Ward, and Smith, and each of them, and each of their estates, from all loss or injury on account of their said suretyship for said Bomford as said administrator. In the second place, (inasmuch as the said Bomford hath heretofore agreed to sell to sundry persons several portions of the property herein conveyed,) to convey and release to said persons the respective parts or portions of said property, which the said Bomford hath agreed to sell to them upon their paying to the said trustees, or his assigns, the full amounts remaining due on their respective purchases. In the third place in trust to sell

and convey all or any part of the property herein conveyed from time to time, and upon such terms and conditions as to him or his heirs or assigns shall seem best, and to invest the proceeds of such sales as he or they may think safest and most expedient. The said investment to be held for the purposes in this deed mentioned, and lastly in trust whenever a safe fund shall be created either from the sales made or rents collected of and from the property in this deed mentioned or otherwise, sufficient fully to indemnify and save harmless the said sureties in said bond to release and reconvey to the said Bomford, his heirs or assigns, whatever of the property herein conveyed may remain unsold by said trustee, the said Bomford hereby authorizing and empowering the said trustee to collect any and all rents coming due from said property, and apply them to the purposes of this trust; and the said George Bomford for himself, and for his heirs, executors, and administrators, doth hereby covenant and agree, to and with the said trustee, his heirs and assigns, that he and they will, until the same be sold, keep the said property in repair and insured from fire, and pay the taxes due or coming due thereon, and further that he and they will, at any time hereafter, execute according to law, any other or further conveyance which the said trustee, his heirs or assigns, or his or their counsel, learned in the law, may require or advise for the better conveyance and more perfect assurance of all and every part of said property, as the same is herein intended to be conveyed and assured to the said trustee.

In testimony whereof I have hereunto set my hand and seal, the day and year first herein mentioned.

GEORGE BOMFORD. [SEAL]

Signed, sealed, and delivered in the presence of—
E. HARKET DERBY,
WM. RICHARDSON.
A. THOS. SMITH,
SAM'L D. KING. } As to CLARA BOMFORD. [SEAL.]

STATE OF MASSACHUSETTS,
County of Suffolk, sct.

We, justices of the peace in and for the county of Suffolk, in the State of Massachusetts aforesaid, do hereby certify, that George Bomford, a party to a certain deed bearing date the thirteenth day of January, 1847, and hereto annexed, personally appeared before us, in our county aforesaid, George Bomford, being personally well known to us as the person who executed said deed and acknowledged the same to be his act and deed.

Given under our hands and seals, this thirteenth day of January, 1847.

E. HARKET DERBY, [L. S.]
WM. RICHARDSON. [L. S.]

STATE OF MASSACHUSETTS,
County of Suffolk, sct.

I, George C. Wilde, clerk of the supreme judicial court in and for said county of Suffolk, being a court of record, do hereby certify, that E. Harket Derby and William Richardson, esquires, before whom the above acknowledgment was taken and who have signed the same, are now, and were at the time of taking the same, and of the execution of within deed, justices of the peace in and for the county of Suffolk, in the State aforesaid, duly qualified and appointed.

In testimony whereof I have hereunto signed my name and affixed the seal of said court, this thirteenth day of January, 1847.

[Seal of court.] GEORGE C. WILDE, *Clerk.*

DISTRICT OF COLUMBIA,
County of Washington, sct.

We, A. Thomas Smith and Samuel D. King, justices of the peace in and for the county of Washington, in the District of Columbia, do hereby certify, that Clara Bomford, the wife of George Bomford, party to a certain deed bearing date the 13th January, 1847, and hereunto annexed, personally appeared before us in our said county, the said Clara Bomford, being personally well known to us as the person who executed said deed, and being by us examined, privately and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Clara, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this sixth day of February, 1847.

A. THOS. SMITH, *J. P.* [L. S.]
SAM'L D. KING, *J. P.* [L. S.]

True copy.
Test: JNO. A. SMITH, *Clerk.*

Whereupon subpœna issued as prayed, returnable the first Monday of October, eighteen hundred and forty-eight; and notice of the substance and objects of the bill was given to the said absent defendants in accordance with the prayer of the said bill.

October rules, 1848.

At which mentioned first Monday of October, in the year eighteen hundred and forty-eight, and the day of the return of the aforesaid subpœna, comes into court here the said complainants, by their solicitors aforesaid.

Marshal's return.

And the marshal of the District of Columbia, to whom the same was directed, returned to the court here that he had summoned Jonathan B. H. Smith, administrator of George Bomford, Lewis Johnson, ad-

ministrator de bonis non of Thadeus Kosciusko, James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith,

Defendants' appearance.

who appear in court here, by John Marbury, Richard S. Coxe, and Henry M. Morfit, esquires, their solicitors.

February rules, 1849.

Whereupon the said cause was regularly continued at rules until the first Monday in February, eighteen hundred and forty-nine, when Lewis Johnson, by Henry M. Morfit, esq., his solicitor, filed in court here his answer to the said bill, in form following, to wit:

L. Johnson's answer.

The answer of Lewis Johnson, admr. de bonis non with the will annexed of Thadeus Kosciusko, to the bill of complaint of John F. Ennis, admr. de bonis non of the personal estate of Joseph Zolkowski and others; of Samuel S. Williams, administrator of Martina Estko, and of Stanislaus Estko; of Hippolitus Estko, Joseph Augustin Estko; of Michael Szyrma; of Adam Bychouill; of Hippolitus Wankowiez; of Vladislaus Wankowiez.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for him to answer unto, answereth and saith: He admits that, after the death of George Bomford, who was administrator de bonis non of the personal estate of said Thadeus Kosciusko, he became the administrator of the effects of said Thadeus, not previously administered by his predecessor, and was induced to take the administration at the instance of G. Tochman, esq., one of the counsel for some of the plaintiffs; and accordingly, on or about the 31st May, 1848, was appointed by the judge of the orphan's court of Washington county, District of Columbia, administrator with the will annexed of said Kosciusko, and as such entered upon his duties in that behalf.

This defendant, however, does not understand, as alleged in the bill of complaint, that he was appointed, or is administrator de bonis non with the three wills of 1798, 1806, and 1816 annexed, as described in the said bill, as it might be impracticable for him to act under wills which are, as it is said, inconsistent in their tendencies and with each other. That this defendant does not admit that the will of 1816, named in the bill, is the last will and testament, or any proper will, of the decedent, Thadeus Kosciusko; but supposes that it was a paper purporting to be a will, which has been admitted merely to record in the orphan's court aforesaid; and that the question of which is the last will

and testament of the said Thadeus, is still pending and open before this court in the equity proceedings instituted by the bill to which this defendant is now answering.

And this defendant is ignorant as to whether the will, alleged in the bill of complaint to have been made by the said Thadeus, in October, 1817, was ever so made, and therefore is in duty bound to deny the existence of the same and of all others until proper proof is made of the same, and it shall have been decided which is the last will, and whether it is to be taken as the exclusive will, or constructed in connexion with any other will or wills, and how it is to be so construed.

And this defendant, not admitting the alleged will of the 4th June, 1816, or any other to be the proper last will and testament of said Kosciusko, is in duty obliged to deny the same, and also the making of any pretended or supposed legacies therein named; and he therefore prays them, the parties complaining, and averring these particulars, may be held to strict proof of all the same.

And to that part of the bill of complaint of said complainants, which sets forth that Hippolitus J. A. Estko, one of the complainants, and Martina Estko, and Stanislaus Estko, whose interests are represented therein by Samuel S. Williams, as administrator upon their respective estates; and so much also as alleges that Michael Szyrma, Hippolitus Wankowiez, Vladislaus Wankowiez, Adam Bychouiee, Joseph Zolkowski, John Zolkowski, John Zolkowski, Caroline Zolkowski, Bregida Zolkowski, Helena Korosof, and Isabella, Wankowicz, which Joseph, John, Carolina, Brigida, and Anne Zolkowski, and Isabella Wankowicz, are represented in said bill by John F. Ennis, as administrator upon their respective estates, were some of the devisees and others, the heirs entitled as in said bill of complaint set forth to the effects and property, or any part of it, in the hands of the defendant, as administrator de bonis non of Thadeus Kosciusko; and also to that part of the bill which avers that any other person or persons called upon as defendant or defendants, to answer as heir [or] heirs, devisee or devisees of said Kosciusko, or as in any way entitled to any part of his estate in the hands of this defendant; this defendant not knowing that they, or either or any of them, are or is such devisee, devisees, heirs, or descendants, or entitled as pretended in said bill of complaint as alleged, is in duty bound in his capacity as administrator de bonis non as aforesaid, and to protect the funds in his hands as such, for those who are truly entitled to it; to deny that they are, or any one, or either of them is, devisee or devisees, heir or heirs, lineal or by law, and that the said or either of the said administrators claiming as representatives or representing any intestate or intestates, is or are entitled in the manner and for the reason set forth in said bill of complaint to any share of the estate of said Thadeus Kosciusko, deceased, in the hands of this defendant, as administrator de bonis non; and he prays that the complainants so claiming may each and every one of them be held to strict proof of their, his, or her heirship rights by devise or otherwise, as they have in their bill alleged.

And this defendant brings to the notice of this court, that he has heard that the will of 1798 was republished or declared by the said Thadeus Kosciusko in a letter addressed by him to Thomas Jefferson, formerly President of the United States, and dated some time in 1817, to be his last will; and he prays that the other parties, who have been made by the complainants parties thereto, may be required to come in and interplead upon this point and question, so that the truth or error thereof may be shown.

And this defendant answering that part of said bill of complaint which calls upon him to set forth and declare what estate and funds he has under his control belonging to the estate of said Thadeus Kosciusko, deceased, and whence and from whom derived, and of what it consists, answers and says, that in his capacity of administrator de bonis non with the will annexed of Thadeus Kosciusko, deceased, he has in his hands, or under his control, stock in the Bank of Washington, so commonly known in the city of Washington, to the nominal amount of $5,580 00.

That the present market price of it is about 60 per cent.; that he has received upon it a dividend of 2 per cent. for the half year ending 30th June, 1848 - - - - - - $111 60

Three per cent. dividend on the same for the half year ending 31st Dec., 1848 - - - - 167 40

279 00

Less costs paid in orphan's court amounting to - - 78 72

$200 28

Not deducting any counsel's fees for the various services in matters pertaining to this cause in the orphan's court, and in the court of equity.

And this farther defendant answering says, that he has no other property, money, or effects in his hands than as above stated; that he is ready and willing to account for and transfer said stock, and pay over the whole money in his hands, after deducting his payments and commissions, to whomsoever and whenever the said court may direct, as he is only a stakeholder, having and keeping the money and stock aforesaid, and all its products in his capacity of administrator de bonis non aforesaid, waiting and abiding the issue of this cause, and any proper order that may be made therein; and that no delay to the just and speedy settlement of the estate in his hands, shall by any act of his, or of his counsel or solicitor, be interposed; that the said stock, as it now stands, is the original stock as he found it in the Bank of Washington, as part of the administration assets of the estate of said Thadeus Kosciusko; and that in answer to that part of the prayer of the complainants which asks that it may be sold, and the proceeds thereof brought into this court and distributed as prayed, he shall make, and

does make, no objection whatever, whenever the court shall think pro per so to direct, order, and decree.

And that this defendant, seeing that there are many defendants and plaintiffs, and that some of both sides are non-residents out of this country, and that the small funds in his hands may be greatly diminished if they are made to bear the charges of this litigation, prays the court that the complainants, who are not citizens of or residents of this county and district, may be required to give security for the costs in these proceedings, and that in any event the funds in the hands of this defendant, as administrator, may be only charged if the complainants succeed with the share duly pertaining to his defence.

And this defendant prays the court to require the parties, complainants and defendants, to bring this cause to an early issue upon all the merits pertaining thereto in equity, so that a speedy decision may be had thereon; and that he may be able to pay the funds in his hands, at an early day, to those who are justly entitled to it.

And this defendant prays that the court will determine which is the last will and testament of said Thadeus Kosciusko, and who are the devisees, heirs, or persons entitled to the funds in his hands.

HENRY M. MORFIT,
Solicitor for the defendant.

DISTRICT OF COLUMBIA,
Washington county, to wit:

On this second day of January, 1849, before the subscriber, a justice of the peace in and for the said county, personally appears Lewis Johnson, who being duly sworn deposes and says, that the statements made by him, in his capacity of administrator de bonis non of Thadeus Kosciusko, in his foregoing answer in chancery, are true to the best of his knowledge and belief.

Sworn before J. L. SMITH, *J. P.*

Whereupon Jonathan B. H. Smith, adm'r of George Bomford, by his solicitor aforesaid, filed in court here a demurrer to the said bill of complaint, in form following, to wit:

Demurrer of J. B. H. Smith, adm'r, &c.

The demurrer of Jonathan B. H. Smith, of Washington county, in the District of Columbia, administrator of the personal estate of George Bomford, deceased, to the bill of complaint of John F. Ennis, adm'r de bonis non of the personal estate of Joseph Zolkowski, deceased; of John Zolkowski, deceased; of Isabella Wankowicz, deceased; of Carolina Brigida and Anna Zolkowski, deceased; of Helena Zolkowski, by marriage Korosof, deceased; and of Samuel Williams, administrator of the personal estate of Martina Estko, deceased; of Stanislaus Estko, deceased; of Hippolitus Joseph Augustine Estko; of Michael Szyrma; of Adam Bychovrier, son of Joseph; of Hippolitus Wanko-

wicz and of Vladislaus Wankowicz, in the circuit court of the District of Columbia, for Washington county, against the said Jonathan B. H. Smith, administrator of the personal estate of George Bomford, deceased, and others.

This defendant, administrator as aforesaid, by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, do demur thereto, and for causes of demurrer show—

1st. That the said complainants have not, in and by their said bill of complaint, stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for, from and against this defendant.

2d. That it appears by the said bill of complaint that the same is exhibited against this defendant in his office and capacity of administrator of the personal estate of George Bomford, deceased, and as trustee of a portion of his real estate, and also in his private and individual character and capacity; and against Lewis Johnson, administrator de bonis non of the personal estate of Thadeus Kosciusko, deceased, cum testamento annexo; and against James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, and Ulysses Ward, for several and distinct matters and causes that have no relation or dependence upon each other; and wherein, as appears by the said bill, this defendant, as administrator of George Bomford's estate, is in no manner interested or concerned, by reason of which matters the complainants' said bill is multifarious, and spun out to great [length;] and by the mingling of such divers defendants and causes together in one bill, in the progress of the suit, the pleading, orders, and proceedings will be intricate and prolix, and this defendant, administrator as aforesaid, be put to unreasonable and unnecessary charges in taking copies thereof.

3d. As to so much of said bill as seeks to set aside and impeach, or have any relief against the will of Thadeus Kosciusko, made and published in the United States, on or about the fifth day of May, in the year 1798, whereby he named Thomas Jefferson his executor; and also against the will of the said Thadeus Kosciusko, made and published in France, on or about the 28th day of June, in the year 1806, whereby he bequeathed to Kosciusko Armstrong the sum of $3,704, in the bill named, as to the personal estate of the said Thadeus Kosciusko, or that seeks a discovery of this defendant relative to the said wills, or either of them, this defendant doth demur thereto, and for cause of demurrer shows, that it appears by the said complainants' own showing in their bill, that the said wills, or the testamentary papers of the said Thadeus Kosciusko, of the dates aforesaid, have each been admitted to probate by the judge of the orphan's court of Washington county aforesaid, and are there of record, as the wills and testaments of the said Thadeus Kosciusko; and this defendant is advised that the probate of wills, relating to personal estates, do properly belong to the said or-

phan's court, and that the same ought not to be called into question in this honorable court.

Wherefore, and for divers other errors and imperfections, this defendant, as administrator aforesaid, demands judgment of this court, whether he shall be compelled to make any other or further answer to the said bill of complaint, or to any of the matters and things therein contained; and prays hence to be dismissed, with his reasonable costs in this behalf sustained.

JNO. MARBURY,
Solicitor for Smith, administrator of G. Bomford.

Demurrer of Jas. Carrico, Saml. Stott, and Geo. C. Bomford.

The demurrer of James Carrico, Samuel Stott, and George C. Bomford, of Washington county, in the district of Columbia, to the bill of complaint of John F. Ennis, administrator de bonis non of the personal estate of Joseph Zolkowski, deceased; of John Zolkowski, deceased; of Isabella Wankowiez, deceased; of Helena Zolkowski, by marriage Korosof, deceased; and of Samuel Williams, administrator of the personal estates of Martina Estko, deceased; and of Stanislaus Estko, deceased; of Hippolitus Joseph Augustin Estko; of Michael Szyrina; of Adam Bychowsie, son of Joseph; of Hippolitus Wankowiez, and of Vladislaus Wankowiez, in the circuit court of the district of Columbia, for Washington county, against the said James Carrico, Samuel Stott, and George C. Bomford and others, defendants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in manner and form as the same are therein set forth, do demur thereto, and for causes of demurrer show:

1st. That the said complainants have not, in and by their said bill of complaint, stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against these defendants.

2d. That, if the matters stated in the said bill of complaint do give the complainants any cause of complaint against these defendants, the same is triable and determinable at law, and ought not to be inquired of by this court.

3d. That it appears, by the said bill of complaint, that the same is exhibited against these defendants in their private and individual characters and capacity; and also against Jonathan B. H. Smith, as administrator of the personal estate of George Bomford, deceased, and trustee of certain parts of his real estate; and against Lewis Johnson, administrator de bonis non of Thadeus Kosciusko, deceased, cum testamento annexo; and against Jacob Gideon, Ulysses Ward, and the said Jonathan B. H. Smith, in their private and individual characters and capacities, for several and distinct matters and causes that have no relation

to or dependence upon each other, and wherein, as it appears by the said bill, these defendants are in no manner interested or concerned; by reason of which matters the complainants' said bill is multifarious, and spun out to great length; and, by the mingling such divers defendants and causes together in one bill, in the progress of the suit, the pleadings, orders, and proceedings will be intricate and prolix, and these defendants put to unreasonable and unnecessary charges in taking copies thereof.

Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court, whether they shall be compelled to make any other and further answer to the said bill of complaint, or to any of the matters and things therein contained; and pray hence to be dismissed, with their reasonable cost in this behalf sustained.

W. REDIN, *for defendants.*

Demurrer of J. B. H. Smith, Jacob Gideon, and Ulysses Ward.

J. B. H. Smith, Jacob Gideon, and Ulysses Ward, by Richard S. Cox, esqr., their solicitor, file demurrers to the said bill similar to the last aforegoing.

March term, 1849.

Whereupon the said cause was regularly continued at rules until the fourth Monday of March, in the year eighteen hundred and forty-nine, when the said demurrers were set for argument.

Replication to answer of L. Johnson.

And the said complainants, by their solicitor aforesaid, entered a replication to the answer aforesaid of Lewis Johnson.

Decree pro confesso vs. absent defendants.

And the said defendants, Roman Estko, Louisa Narbut, born Estko, Thadea Emilie Wilchelmine Zeltner, Maria Charlotte Julia Marguerette Zeltner, Bonnissant, père, General Baszkoyski, Emilie Zeltner, Mr. and Mrs. Edward Zeltner, Zavier Amieth, Dr. Shürer, and Miss Ursula Zeltner, failing to appear and answer the aforesaid bill of complaint of the said complainants, after being thereunto solemnly warned by publication as aforesaid, the court, on motion of the complainants, by their solicitor aforesaid, passed a decree pro confesso against them.

Demurrers overruled—order that defendants answer.

Whereupon the said cause was regularly continued at rules until the third Monday of October, in the year eighteen hundred and forty-nine, when all and singular the premises being by the court here seen and understood, and the said parties, by their solicitors aforesaid, be-

ing heard, and after mature deliberation being thereupon had, the said court overruled the demurrers aforesaid so as aforesaid pleaded by the said defendants to the aforesaid complainants' said bill, and ordered that the said defendants answer the complainants' said bill of complaint on or before the second Monday in February next.

Amended bill.

Whereupon the said complainants, by their solicitors aforesaid, filed in court here their amended bill of complaint, in form following, to wit:

To the honorable the judges of the circuit court for the District of Columbia, in the United States, sitting in chancery.

This amended bill of your orator, John G. Ennis, administrator de bonis non of the personal estate of Joseph Zolkowekie, John Zolkowekie, Isabella Wankeewicz, Caroline Zolkerwekie, Bregida Zolkowskie, Anna Zolkerwekie, Helena Zolkowekie, by marriage Kerosof; of your orator Samuel S. Williams, administrator of the personal estates of Martina Estke and Stanislaus Estke; of your orator, Hippolitus Joseph Augustus Estke; of your orator, Michael Szyrma; of your orator, Adam Byhowiee, son of Joseph; of your orator, Hippolitus Wankewieer, and of your orator, Vladislaus Wankewrer, humbly showeth unto your honors—

That on the 26th day of September, 1848, your orators filed a bill, having for its object to obtain discovery, account, and distribution of the personal estate which General Thaddeus Kosciusko left in this country.

That some of the defendants named in said original bill, to wit, Jonathan B. H. Smith, administrator and trustee of George Bomford, the deceased administrator of Kosciusko's estate, and James Carrico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, sureties to the probate bond of the said George Bomford, deceased, filed several demurrers to said original bill of your orators; said several demurrers your honors overruled by a decision given on the 22d day of December, 1849, and ordered said defendants to file their respective answers on or before the second Monday of February next.

That in said decision of the 22d day of December, 1849, your honors suggested that "it may, perhaps, be necessary that Krosciuske Armstrong should be made a party before final decree can be made in this case."

Your orators therefore file this their amended bill; pray that it may be taken as a part of their original bill aforesaid; charge herein that subsequent to the filing of said original bill, to wit, on the 6th day of February, 1849, the probates of the wills dated 5th of May, 1798, and 28th of June, 1806, have been revoked by the orphan's court for the county of Washington, District of Columbia.

They further charge and show that said Kosciusko Armstrong does not reside within the jurisdiction of this District, and by reason thereof they pray that he may be made a party in this case by publication. Wherefore your orators further pray that an order of publication, in usual form, may be granted against said Kosciusko Armstrong, warning him to appear in this court and answer the premises of the original bill, and of this amended bill, by a certain day, &c., or said bills shall be taken pro confesso against him, &c.

And, as in duty bound, your orators will ever pray, &c.

REVERDY JOHNSON,
GASPARD TOCHMAN,
Solicitors.

CITY AND COUNTY OF WASHINGTON,
District of Columbia, to wit:

Be it remembered, that on this 28th day of December, 1849, before me, Thomas Donoho, justice of the peace of the aforesaid county, in the District of Columbia, personally appeared Gaspard Tochman, solicitor of the heirs of Kosciusko, and after being duly sworn, and according to law, says that he has reason to believe, and verily believes, that Kosowiske Armstrong, made a party defendant to this bill, does not reside within the jurisdiction of the District of Columbia.

THOMAS DONOHO, *J. P.*

Order of publication.

Whereupon notice of the substance and objects of said bill was given to the absent defendant, Kosewisk Armstrong, in accordance with the prayer of said bill.

February, 1850.

Whereupon the said cause was regularly continued until the second Monday of February, eighteen hundred and fifty, when the said defendants, by their solicitors aforesaid, file in court here their answers to the said bill, in form following, to wit:

Joint answer of Samuel Stott and James Carrico.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington, in equity.

The joint and several answer of Samuel Stott and James Carrico to the bill of Hippolitus Joseph A. Estko and others, claiming to be heirs at law and next of kin of Thaddeus Kosciusko, a native of Poland, filed in the said court.

These defendants, saving and reserving, now and at all times hereafter, all and all manner of benefit of exception to the many uncertainties and imperfections in the said bill contained, and to the want of form thereof according to the rules and practice of your honorable court,

and not waiving but insisting upon the demurrer heretofore put in by them in this cause to the said bill, for multifariousness and other just and equitable causes, for answer, under protestation, nevertheless, to the said bill, or to so much of the same as they are advised it is material they should make answer, they say, that they have no knowledge that the said Thadeus Kosciusko was at the time of his death possessed of a large estate in the United States of America, and in various parts of Europe, or that he in his lifetime made the several testamentary papers mentioned in the said bill, but they have heard and believe that the said Kosciusko did, in his lifetime, and about the year 1798, deposit in the hands of the late Thomas Jefferson, of the State of Virginia, a large sum of money, which he designed to devote to certain charitable purposes, which then, and as these defendants are informed and believe, he wished to have accomplished; and that in order to carry into effect his said charitable purposes, he at the same time made and delivered to said Jefferson the paper bearing date the 5th of May, in the year 1798, mentioned in the said bill of complaint, and named the said Thomas Jefferson his sole executor. And these defendants admit that the said paper was afterwards, on the announcement of the death of the said Kosciusko, exhibited and admitted to probate in Albemarle county, in the State of Virginia, a court having jurisdiction of the matter, and which probate remains in full force, and has not been admitted to probate in the orphan's court of this county, so far as these defendants know or believe.

And these respondents further answering say, they have been informed and believe, that after making the said last mentioned paper the said Kosciusko left the United States, and was a sojourner in France and Switzerland until the time of his death. But these defendants deny that the said Kosciusko removed to France, at any time of his life, with the intention of making that country his place of permanent residence; they deny that France was the place of his domicil or permanent residence at the time of his death; on the contrary, these defendants have been informed, and therefore charge, that the said Kosciusko never did abandon the hope that circumstances would favor his return to his native country, or the intention, whenever the political condition of Poland would permit him to do so with advantage to that country, to return to it and resume his rights and duties as a citizen thereof, and they aver that such was his intention.

These respondents further answering say, that they have no knowledge of the said alleged testamentary papers mentioned in the said complainants' bill, averred to be dated the 28th June, 1806, and the 4th of June, 1816; they do not know that the said papers were or were not the wills of the said Kosciusko; they do not admit that they were, nor do they admit that the said papers, or either of them, have or hath been proved or admitted to probate in the said orphan's court of this county; and they require that all the matters averred in the said bill relative to the said alleged testamentary papers, be fully and strictly proved under the sanction and according to the rules and practice of

your honorable court, by the parties who claim any benefit or advantage under the same.

These respondents further say, that they have been informed and believe it to be true, as stated in said bill, that the said Thadeus Kosciusko did, on the 10th of October, in the year 1817, while sojourning in Switzerland, make and publish a testamentary paper, bearing date on that day, which, if not introduced and proved by the said complainants, these defendants hope it may be in their power to produce and prove, and when so produced and proved, they pray that the same may be taken as a part of this their answer.

These respondents further state, that on the 18th, 15th day of September, in the same year 1817, after the date of the said alleged testamentary papers of 1806 and 1816, above named, the said Kosciusko wrote to the said Thomas Jefferson, the executor named in the said paper of the 5th May, 1798, a letter of the date first named, which letter was received by the said Thomas Jefferson, and in which he distinctly refers to the said fund or sum of money deposited with the said Jefferson on his, said Kosciusko's, departure from the United States in the said year 1798, and which was the subject of the said paper, bearing date in that year, before mentioned; and the said Kosciusko, in and by such letter, re-affirms his purpose and design to have the same applied, after his death, by the said Jefferson, in the manner and to the objects set forth in the said paper; and these defendants hope they may be able to produce the said letter before your honors, and if the same be irrevocably lost, to prove the contents thereof.

These defendants admit the death of the said Thadeus Kosciusko, in Switzerland, on or about the 15th of October, 1817; they deny, however, that he died intestate of his personal property in the United States; but insist that the same was disposed of by the said deposite, and the said declaration of trust contained in said paper of 5th May, 1798.

These respondents further say, that they have no knowledge of the pedigree of the said Thadeus Kosciusko; they do not know that he died without issue; nor do they know that said complainants, suing in their own right, or that the deceased persons claimed respectively to be represented in this cause by John F. Ennis and Samuel S. Williams, as administrators, were the next of kin or heirs-at-law of the said Kosciusko, or in any manner or degree related to him; but these defendants deny the same, and they require that the said complainants and each of them shall be held to make strict proofs, according to law and the established rules and practice of your honorable court, of their connexion with, or relationship to, the said Kosciusko, as averred in the said bill. And these defendants, in connexion with this part of the subject of this cause, bring to the notice of your honors the proceedings in a certain cause depending in this court, in which a certain Pole, called Klimkiewietz, was complainant, and George Bomford, in the bill named, in his lifetime, and others, were defendants, and still undisposed of; in which the said Klimkiewietz set up, and apparently es-

tablished by proof, that he was the next of kin of said Kosciusko, depositions to which effect are now on file in your honorable court, and although the said complainant is dead, they are informed that the said cause may be revived by, and is now in the hands of counsel on behalf of his widow and children, who are alive, and assert that he was the next of kin of said Kosciusko as averred in his bill.

These defendants admit it to be true that the said Thomas Jefferson declined the executorship of the said paper of the 5th May, 1798, and that letters of administration were, in 1821, granted by the orphan's court of this county to Benjamin L. Lear, in the bill mentioned, upon the estate of the said Kosciusko; and that in virtue thereof there came to the hands of said Lear from the said Thomas Jefferson, as the estate of said Kosciusko, divers certificates of stock of the United States, amounting to $11,366 63 and $1,136 36, and one certificate of 46 shares of stock in the late Bank of Columbia, amounting at their par value to $4,600. And these defendants say, that the said Lear, having so possessed himself of the said assets, collected and changed and converted the whole of the same, (except the said stock of the Bank of Columbia,) into money, and placed out or reinvested the same, or the proceeds of the said assets, and the accruing interest, dividends, and income thereof, from time to time, during his life, partly in the Bank of Metropolis and other stocks, and in other part *in other part* in and upon mortgages and other securities, in his own name, and that the same so remained and continued invested until the period of his death; all of which will and doth appear in the divers accounts and settlements of said Lear made in the said orphan's court, to which these respondents crave leave to refer, and hereafter to produce official copies.

And these respondents admit that the said Benjamin L. Lear departed this life in the year 1832, without having made any distribution of the assets which came to his hands as aforesaid.

And these respondents state and show to your honors, that George Bomford, in the said bill mentioned, was named and appointed by the said Lear his executor; and that he duly obtained letters of administration, with the will annexed, of said Lear, from the said orphan's court; and thereby, as these respondents are advised and expect to maintain, became lawfully possessed, as the executor and administrator of said Lear, and as such bound to account for and distribute, to whomsoever might be entitled thereto, of all that part of the estate of the said Kosciusko, which had been reduced into money by the said Lear, and stood invested in his name at the time of his death as aforesaid; and no other person, as they are further advised and submit, had, upon the death of said Lear, any right or authority to intermeddle therewith, or could do so lawfully; and they further say that they are informed and believe that the said George Bomford, executor as aforesaid, did take into his possession all the securities, stocks, and mortgages standing in the name of the said Lear as aforesaid, and possess himself thereof; and afterwards, and after said Lear's death, and as his executor, settled an account thereof with the said orphan's court, in which he charged

himself as executor of said Lear, with all the stocks, bonds, mortgages, and other securities for the payment of money, and money in said Lear's hands as administrator as aforesaid, at the time of his death, as by exhibit A, No. 6, appears.

These respondents further admit that the said George Bomford, also, after the death of said Lear, obtained letters of administration de bonis non, as stated in the bill from the said orphan's court, upon the uncollected, unconverted, and unadministered estate of the said Thadeus Kosciusko; and they admit that the said stock of the said Bank of Columbia did come to the hands of the said Bomford as such administrator de bonis non; but they deny that any of the assets of the said Kosciusko which had been collected and converted into money by said Lear, and invested by him as aforesaid, did or could lawfully and of right come or pass to the hands of the said George Bomford as such administrator de bonis non.

And as to the said stock of the said Bank of Columbia, (the only part of the unadministered and unconverted assets of said Kosciusko by said Lear as aforesaid,) which came to the hands of said Bomford, administrator as aforesaid, the same hath been utterly lost to the estate of the said Kosciusko, without any fault of the said Bomford, by the insolvency of the said bank long before these defendants became sureties in the administration bond of said Bomford. They say and show that the said stock now stands on the books of the said bank as the same stood at the death of said Kosciusko, and the administration and death of said Lear, and is subject to the control and disposition of Lewis Johnson, in the bill mentioned, the present administrator de bonis non of said Kosciusko. These defendants therefore answering say, that so far as they are called on as sureties of said Bomford to account for the assets of said Kosciusko which came to his hands as administrator de bonis non, none, save the said Bank of Columbia stock, did or could lawfully come to his hands, for which he as such administrator, and they as his sureties, can be accountable.

They admit the execution of the bond set forth in said bill, and a copy of which is exhibited with said bill; but deny that any assets of Kosciusko, or of his estate, (or if any, but a small portion thereof, of which they are not particularly informed,) came to the hands of said Bomford as administrator de bonis non as aforesaid, after the date and execution of said bond, or that afterwards he wasted any part of said estate, or failed to account for [the] same according to condition of said bond.

And these respondents further answering say, that if any part of the estate of said Kosciusko came to the hands of said Bomford as such administrator de bonis non, before the execution of said bond, an entire devastavit had been committed by him of the same long before the date and execution of the said bond.

And these respondents contend and submit, that they cannot, either at law or in equity, be held responsible as sureties in such bond, for any waste or devastavit of any such assets, if any came to the posses-

sion of said Bomford in his office of administrator de bonis non, committed before they [be]came such sureties, any more than they can as such be justly made responsible for any assets, if any, that said Bomford on the death of said Lear might have obtained unlawfully, and without due and legal authority, power, or right, and with which he may have improperly and illegally charged himself in the said orphan's court as administrator de bonis non of said Kosciusko.

And these respondents further insist, that if there has been any default on the part of said Bomford in respect of the assets of said Kosciusko, which said Lear collected and turned into money, and reinvested in his own name as aforesaid, and if there be any consequent responsibility therefor, it rests on the said Bomford as executor or administrator of said Lear and his sureties in that capacity, and not upon these defendants, or sureties for him as administrator de bonis non of said Kosciusko, whose obligation extended no farther than to the due administration by said Bomford of such assets of said Kosciusko as he ought and might lawfully take into his hands to be administered as administrator de bonis non.

And these defendants say that said Bomford, at the time he became administrator de bonis non, gave a good and sufficient bond, with good and sufficient securities, against whom the complainants had their remedy for any default, and if lost it has been by their own laches; and they insist that the obligations under such bond did not devolve upon the sureties in the subsequent bonds. And they further show and insist that said complainants, or some of them, did know of the situation of the estate of said Kosciusko for at least twenty-five years, and that they have utterly failed duly to prosecute any claims they may have with effect against any of the parties respectively liable therefor, if liable at all.

And these defendants submit to your honors that the sureties of said Bomford, as executor and administrator of said Lear, as well as the sureties for said Bomford, in the bond first filed by him as administrator de bonis non of said Kosciusko, or their representatives, (and whose estates are not admitted to be insolvent, as averred in said bill *bill*, but the same is denied,) ought to have been made parties to said bill, if indeed sureties in such bonds can be lawfully brought into equity to account, which these defendants not only do not admit, but deny.

These respondents further say, that they have no assets belonging to the estate of said Kosciusko in their hands, know of none, (except what said Johnson has possessed himself of,) and have no account or discovery thereof to make or render.

It is true, as stated in said bill, that said George Bomford made and executed the deed to J. B. H. Smith therein mentioned; the object and effect of which will appear, when the said complainants shall have placed the same before your honors.

And these respondents further submit, that they have been improperly joined as defendants in said bill; that they cannot be sued, or made to respond to said complainants on said bond in equity; but that

their liability, if any, to said complainants is in a court of law. For which cause, as well as divers others set forth in this answer, they pray to have the benefit of this answer as a demurrer, according to the practice of your honorable court, and that they may be dismissed with their costs, &c.

JAS. CARRICO,
SAML. STOTT,
W. REDIN,
For defendants.

DISTRICT OF COLUMBIA,
Washington county, to wit:

On this 9th day of February, 1850, personally appeared before me, the subscriber, a justice of the peace in and for the said county, James Carrico and Samuel Stott, and each for himself made oath on the holy evangelists of Almighty God that the several matters stated in the aforesaid answer as being within their respective knowledge are true, and those which are not stated to be within their own knowledge, they believe the same to be true as stated.

H. ADDISON, *J. P.*

Answers of Jacob Gideon, U. Ward, J. B. H. Smith, and G. C. Bomford.

The joint and several answers of Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, and George C. Bomford, to the bill of complaint of John F. Ennis, administrator de bonis non of Joseph Zolkowski, of John Zolkowski, of Isabella Wankowicz, of Carolina Zolkowski, of Brigida Zolkowski, of Anna Zolkowski, of Helena Zolkowski, by marriage Korosof, all deceased; of Samuel S. Williams, administrator of the personal estates of Martina Estko, of Stanislaus Estko, both deceased; of Hippolitus Jos. A. Estko, and of others claiming to be the heirs-at-law and next of kin of Thadeus Kosciusko, a native of Poland, in the circuit court of the District of Columbia.

These defendants, saving and reserving to themselves, and each to himself, now and at all times hereafter, all and all manner of benefit of exception to the many uncertainties and imperfections in the said bill of complaint contained, and not waiving, but insisting upon the demurrer heretofore put in by them in this cause to the said bill of complaint for multifariousness and other just and equitable causes, for answer, under protestation nevertheless to the said bill, or to so much of the same as they are advised it is material and proper they should answer, they answering, say, that they have no knowledge that the said Thadeus Kosciusko was at the time of his death possessed of a large estate in the United States of America, and in various parts of Europe, or that he in his lifetime made the several testamentary papers mentioned by the complainants in their said bill; but they have heard and believe that the said Thadeus Kosciusko did in his lifetime, and

about the year 1798, deposit in the hands of Thomas Jefferson, of the State of Virginia, a large sum of money, which he designed to devote to certain charitable purposes, which then, and as these defendants are informed and believe, to the time of his death, he wished to have accomplished. And that in order to carry into effect his said charitable purposes, he at the same time made and delivered to said Jefferson the paper, dated the 5th day of May, in the year 1798, mentioned in the complainants' bill, and named the said Thomas Jefferson his sole executors. And the defendants admit that the said paper was afterwards, on the announcement of the death of the said Kosciusko, exhibited and admitted to probate in the court of Albemarle county, in the State of Virginia, having full and complete jurisdiction in the matter; and that said probate remains in full force and virtue in said court, having never been revoked or annulled, but that the same has not been admitted to probate in the orphan's court of the District of Columbia for Washington county, so far as these defendants know or believe.

The defendants further answering say, they have been informed and believe, that after making the said last mentioned paper, the said Kosciusko left the United States of America, and was a sojourner in France and Switzerland until the time of his death; but these defendants deny that the said Kosciusko removed to France at anytime of his life with the intention of making that country his place of permanent residence; they deny that France was the place of his domicil or permanent residence at the time of his death. On the contrary, these defendants have been informed, believe, and charge that the said Kosciusko never did abandon the hope that circumstances would favor his return to his native country, or the intention, whenever the political condition of Poland would permit him to do so with advantage to that country, to return to it, and resume his rights and duties as a citizen thereof.

The defendants further answering say, that they have no knowledge of the said alleged testamentary papers mentioned in the complainants' bill, as of the 28th day of June, in the year 1806, and of the 4th day of June, in the year 1816; they do not know that the said papers were or were not the wills of the said Kosciusko; they do not admit the same to be the wills of the said Kosciusko; neither do they admit that the said papers, or either of them, have been proved or admitted to probate in the said orphan's court; and they require that all the matters averred in the said bill of complaint relative to the said alleged testamentary papers, shall be fully proved under the sanction and according to the rules and practice of your honorable court by the parties who claim any benefit or advantage under the same.

These defendants further say, that they have been informed and believe that the said Thadeus Kosciusko, on the 10th day of October, in the year 1817, while sojourning in Switzerland, did make and publish a testamentary paper, bearing date of that day, a copy of which, if not introduced and proved by the complainants, the defendants hope it may be in their power to produce and prove; and when so produced

and proved, they pray that the same may be taken as part of this their answer.

The defendants further state, that on the 15th day of September, in the year 1817, after the date of all the said alleged testamentary papers, the said Kosciusko wrote to the said Thomas Jefferson, the executor named in said paper of the 5th day of May, 1798, a letter of that date, which letter was received by the said Thomas Jefferson, in which he distinctly refers to the fund or sum of money deposited with the said Jefferson on his, the said Kosciusko's, departure from the United States, in the year 1798, and which was the subject of the paper bearing date in that year before mentioned, and reaffirms his purpose to have the same applied by the said Jefferson, after the death of the said Kosciusko, in the manner and to the objects set forth in the said paper; and these defendants hope to produce the said letter before your honorable court, and if the same shall have been irrevocably lost, to prove the contents thereof.

These defendants admit the death of the said Thadeus Kosciusko in Switzerland, on or about the 15th day of October, in the year 1817; they deny, however, that he died intestate of his personal property in the United States, and insist that the same was disposed of by the deposit and declaration of trust contained in the paper of the 5th day of May, in the year 1798.

The defendants further say, that they have no knowledge of the pedigree of the said Thadeus Kosciusko; they do not know that he died without issue; nor do they know that the said complainants suing in their own right, or that the persons respectively represented in this cause by John F. Ennis and Samuel S. Williams, as administrators, were the next of kin or heirs-at-law of the said Kosciusko, or in any manner or degree related to him; or that they are now dead; or when they died; or, if dead, whether they died intestate, or whether they left wills; but they deny the same, and they require that they, and each of them, shall be held to make strict proof, according to law and the established rules and practice of your honorable court, of their connexion with, or relationship to, the said Kosciusko, of the death of said parties, and when they died, and that they died intestate, as averred or necessarily implied by them in their said bill. And these defendants, in connexion with this part of the subject of this cause, bring to the notice of your honorable court the proceedings in a certain case depending before your honors, in which a certain Pole, called ———— Klimkerwich, was complainant, and the said George Bomford, in his lifetime, and others, were defendants, and still undisposed of; in which the said complainant set up, and apparently established by proof, that he was the next of kin of the said Kosciusko; the depositions of divers witnesses to that effect, filed by the said Klimkerwich, are now of record in your honorable court. And the defendants show that, although the said complainant is dead, they are informed that the said cause may be revived by his widow and children, who are now

alive, and assert the fact of his having been, as affirmed in his said bill, the next of kin of the said Kosciusko.

These defendants admit it to be true that the said Thomas Jefferson declined the executorship of the said paper of the 5th May, 1798, and that letters of administration, with the will annexed, of the estate of the said Thadeus Kosciusko were granted by the said orphan's court of Washington county to Benjamin L. Lear, and that the said Lear took upon himself the duties of said trust. And the defendants are informed, believe, and charge, that the estate of the said Kosciusko, at the time when the administration thereof was so committed to the said Lear, consisted of divers certificates of stock of the United States, worth, at the par value thereof, $12,499 99, and forty-six shares of the capital stock of the Bank of Columbia, in the District of Columbia, of $100 par value each, as appears by a copy of the inventory and appraisement thereof, filed by the said Lear in the said orphan's court, herewith exhibited and marked A, No. 1; and these defendants file herewith four accounts of the said Benjamin L. Lear as administrator aforesaid of the said Thadeus Kosciusko, settled with the said orphan's court in his lifetime; the same are severally marked exhibits A, No. 2; A, No. 3; A, No. 4; A, No. 5; and they especially refer to the said account A, No. 5, whereby it appears, that at the time said account was settled with said court, the said Lear had reduced all the said inventoried stocks of the United States belonging to the estate of the said Kosciusko into money; and these defendants in fact say and affirm, that the said Lear, in his lifetime, as administrator of the said Kosciusko, did collect, get in, and convert all the specific estate of the said Kosciusko into money, (except the said forty-six shares of the capital stock of the Bank of Columbia,) and reinvested the same from time to time, with the annual increase and profits thereof, in his own name in divers other securities; and that the same continued so invested at the time of his death; all which will appear by reference to the accounts of his said administration, herewith before exhibited.

The defendants admit that the said Lear died in the year 1832 without having made any distribution of the assets which came to his hands as aforesaid.

And the defendants further answering state, that the said George Bomford, in the said bill mentioned, was named and appointed by the said Lear the executor of his last will and testament, and obtained letters of administration, with the said will annexed, of the estate of the said Lear, from the said orphan's court, copies of which are herewith filed marked N and M, undertook the duties and obligations of said trust; that the said George Bomford, as such administrator of the estate of the said Lear, was by law charged with the duty of accounting for and distributing, to whomsoever might be entitled thereto, all that part of the estate of the said Kosciusko, which had been, by the said Lear in his lifetime, reduced into money, and stood invested in the name of the said Lear; and no other trustee, person, or officer had any right, or was under any duty or obligation to meddle or interfere with the

same; that the said George Bomford did, by virtue of his said office of administrator of the said Lear, in fact possess himself of all the securities, stocks, bonds, and mortgages, and other evidences of debt standing in the name of the said Lear, and in which he had invested the proceeds of the original specific property of the said Kosciusko, and its increase in his lifetime. And afterwards, and after the death of the said Lear, and as his executor, settled an account thereof with the said orphan's court, in which he charged himself, as executor of said Lear, with all the stocks, bonds, mortgages, and other securities for the payment of money, and money which were in the hands of said Lear as administrator of said Kosciusko cum tes. annexo, at the time of the death of said Lear, a copy of which is herewith filed and marked exh. A, No. 6.

And the defendants admit that the said George Bomford, also after the death of the said Lear, obtained letters of administration de bonis non from the said orphan's court, upon the uncollected, unconverted, and unadministered estate of the said Thadeus Kosciusko; and they admit that the said forty-six shares of the capital stock of the said Bank of Columbia, remained at the death of the said Lear specifically as it was at the time when he took out letters and assumed the administration of the said Kosciusko estate; and that the said stock did come to the hands of the said George Bomford as such administrator de bonis non; but these defendants deny that any of the estate of the said Kosciusko, which had been collected and turned into money by the said Lear in his lifetime, or any of the interest or annual profits of the said estate which had been received by the said Lear during the period of his said administration, and had been by him invested in his own name, did, or could have legally come or passed to the hands of the said George Bomford as administrator de bonis non of the estate of the said Kosciusko. And as to the said stock of the Bank of Columbia, the only part of the unadministered assets or estate of the said Kosciusko at the death of the said Lear, which came to the hands of the said George Bomford as administrator de bonis non of the estate of said Kosciusko, the same has been utterly lost to the said administrator de bonis non without his fault by the insolvency of the said bank; the said stock now stands on the books of the said bank as it stood in the lifetime of the said Kosciusko, and at the time of his death; and is subject to the control and management of the defendant, Lewis Johnson, the present administrator de bonis non of the said Kosciusko; these defendants, therefore, so far as they (as sureties in the bond of the said George Bomford, as administrator de bonis non of the estate of said Kosciusko,) are called in to account for the estate of the said Kosciusko which came to the hands of the said Bomford in that office say, that there came to the hands of the said Bomford no part of the said estate save the bank stock aforesaid, for which he was, in his said office of administrator d. b. n., and they as his sureties as such administrator, are accountable; they further state that the stock of the said bank had become entirely worthless by its insolvency and the expira-

tion of its charter many years before these defendants became the sureties in the said Bomford administration bonds; these defendants admit the execution of the said bonds by them severally as charged in the bill of complaint, but they deny that any assets of the said Kosciusko came to the hands of the said Bomford as administrator de bonis non of said Kosciusko after the date of the said bonds, or that the said Bomford, after the date of the said bonds, wasted any part of the said estate, or failed or refused duly to account and pay the same according to the condition of the said bonds or either of them.

And these defendants further answering say, that if any part of the estate of the said Kosciusko came at any time before the date of the said bonds to the hands of the said Bomford, as administrator de bonis non of the said Kosciusko, an entire devastavit had been committed by him of the said estate long before the date of the said bonds; and these defendants contend and submit that they cannot, either at law or in equity, be held responsible as sureties in the said bonds for any waste or devastavit of any such assets, if any such came to the hands of the said Bomford in his said office of administrator de bonis non, committed or suffered before they became such sureties; nor can they be at law or in equity held responsible as such sureties for any assets, if any, that might have come to the hands of said Bomford, as the administrator or executor of the said Lear, or by any other collateral authority, and with which he may have improperly and illegally charged himself in his accounts in the orphan's court aforesaid as the administrator de bonis non of the said Kosciusko.

And these respondents further insist, that if there has been any default on the part of the said George Bomford, and any consequent responsibility any where for the waste or misapplication of the assets of the estate of the said Kosciusko which came to the hands of the said Lear, and had been by him turned into money, and re-invested in his own name, and for the annual increase or profits of such estate, it rests and ought to rest on the said George Bomford, as executor or administrator of the said Lear, and his sureties in that office; and not upon the sureties of said Bomford as such administrator de bonis non, who undertook to be responsible only for the due and faithful administration by the said Bomford of such assets of the said Kosciusko, and such only as he ought and might lawfully take into his hands to be administered in that office.

And these defendants further say, that at the time when said Bomford became, under the appointment and authority of said orphan's court as aforesaid, the administrator de bonis non of the estate of said Kosciusko, he gave a good and sufficient bond with good and sufficient securities for the faithful performance of his duties as such. And that if said Bomford by any act or omission forfeited said bond, or if he and his said securities incurred any responsibility or liability by or by reason of any act of misfeasance or nonfeasance, the parties aggrieved by such conduct had their full, adequate, and legal remedy upon such bond against said Bomford and his said sureties; and if they have by

law lost such remedy, it is by their own negligence by which these defendants charge and insist that the obligations arising under said bond did not devolve upon the sureties under the subsequent bonds upon which complainants now assert their right.

And these defendants further show unto your honors, that the said complainants, or some of them, and those under whom some of said complainants now assert right and title, have for a long period of time, viz., for at least twenty-five years, been fully cognizant of the situation of the property of said Kosciusko, did assert their right to the same in this honorable court during the lifetime of said Lear, and during the lifetime of said Bomford, as administrator de bonis non; and have failed to prosecute said suits to a conclusion or to a decree, but have neglected and omitted to prosecute the same against the parties, who, if any were primarily and exclusively responsible for the defalcations, misfeasance, or nonfeasance of said Lear, as administrator cum testamento annexo, or of said Bomford, as administrator de bonis non; and these proceedings which defendants are ready to prove from the records of this honorable court, and the pending of said suits, and the omission and negligence of said parties to said proceedings, and said lapse of time, during which complainants have slept upon their rights, if any they have, or ever had, these defendants pray may be made available in their defence as fully and completely as if the same were specially pleaded in bar.

And these defendants submit to your honors, that the sureties of the said Bomford, as executor and administrator of the said Lear, as well as the sureties of the said Bomford, in the bond first filed by him as administrator de bonis non of the said Kosciusko, or their representatives, ought to have been made parties in this case; if indeed sureties in such bonds can be legally called to account in equity by parties standing in the relation of distributees, or next of kin of an intestate; which these defendants do not admit, but deny.

These defendants further say, that they have no assets belonging to the estate of the said Kosciusko in their hands; they know of none, and have no account or discovery to make in the premises.

And the said J. B. H. Smith, further answering in his office of administrator of the said George Bomford, says, that he undertook to administer and settle the personal estate of the said George, as stated in the bill of complaint; he states that no part whatever of the estate of said Kosciusko has come to his hands as administrator *as administrator* of said Bomford; he has no personal knowledge that any part of the said estate came to the hands of the said Bomford, his intestate, as administrator de bonis non of said Kosciusko; he finds that the said Bomford settled an account in the orphan's court aforesaid on the 15th day of March, in the year 1839, which purports to be "the first account of George Bomford, administrator de bonis non, with the will annexed of Thadeus Kosciusko, deceased," in which said account he charges himself with the sum of $31,785 27½, "the balance due by the former administrator of T. Kosciusko, as settled with the orphan's

court; which said sum is precisely the balance appearing to be in the hands of the said Lear on the settlement of the fifth and last account of his administrator of said Kosciusko, herewith exhibited, and marked A, No. 6, and consists of the annual increase and profit of the estate of the said Kosciusko, which came originally into the hands of the said Lear as his administrator, and which accrued and became payable after the death of the said Kosciusko, and the proceeds of the said principal estate, the whole of which had been turned into money by the said Lear, except the said stock of the Bank of Columbia; and the said J. B. H. Smith does not know or believe that any other property or estate of the said Kosciusko came to the hands of the said George Bomford. And the said J. B. H. Smith further answering says, that it is true, as stated in the bill of complaint, that the said George Bomford, having in virtue of his said office of executor or administrator with the will annexed of the said Lear, or as administrator de bonis non with the will annexed of the said Kosciusko, as may be adjudged by the honorable court having reference to his legal power and control over the said funds in the one or the other of his said offices, possessed himself of the estate of the said Kosciusko, did use and convert (the same) to his own use, as is stated in the complainants' bill, and afterwards departed this life intestate and insolvent.

And the said defendant, Smith, says, that as administrator of the estate of the said Bomford, he has no assets of the estate of said Kosciusko, and has no expectation that any such assets will hereafter come to his hands, and therefore he has nothing for which to account in the premises.

The said defendant, Smith, further answering, as administrator of the said George Bomford admits, that he has received from the estate of the said George Bomford, the goods, chattels, effects, and credits, which are mentioned in a schedule thereof, herewith filed as part of this answer, and he states that there exists divers unsatisfied judgments which were rendered by your honorable court against the said George Bomford in his lifetime, copies of which are herewith filed, and which he is advised are to be paid before any other claim or demand of an inferior character; he believes that the said judgment debts will exhaust the whole of the personal estate of the said Bomford which has come, or is likely to come, to his hands to be administered; the said schedule and judgments are severally exhibited and marked J. B. H. S., No.

The said Smith further answering says, it is true that the said George Bomford made and delivered in his lifetime to the said Smith the deed mentioned by the complainants in their bill, the object and effects of which will appear when the complainants shall have placed the same before the court; but the said defendants say that the estate conveyed to him by the said Bomford, in and by the said deed, was at the date thereof, and now is, encumbered by divers older deeds of trust, mortgages, and judgments, which still remain unsatisfied, and a charge on the property so conveyed to the said defendant; all which will be made to appear when in the further progress of this cause the same shall be

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referred to the auditor for the purpose of ascertaining and adjusting the respective responsibilities and claims of the parties thereto.

And the said Smith further answering says, that since the execution of said deed of trust to him he has received, errors excepted, from divers persons on account of the property mentioned in said deed, at various times, and in small sums, the sum of $\$1,719\frac{14}{100}$ for rents; and also the sum of $\$2,437\frac{78}{100}$ on account of balances due by divers persons on sales made by some of the said property so mentioned by said Bomford in his lifetime; that these sums are subject to deductions for moneys paid by him for taxes, insurance, and necessary repairs, &c., on the same; that these sums he holds under said trust, and subject to the future orders and decrees in the premises of your honorable court.

And these defendants, who are sued in this cause as sureties in the bonds of the said George Bomford, submit that they are improperly joined as defendants in this bill; that they cannot be sued by the complainants claiming to be the next of kin and legal distributees of the estate of the said T. Kosciusko in a court of chancery, or made to respond to them as such in equity on the said bonds, but that their liability to the said complainant, if any, is at common law; for which cause and divers others set forth in this answer, they pray that the said bill may be dismissed as against them, as if they had in due form filed a demurrer thereto for said causes.

JOHN MARBURY, *for defts.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

On this 11th day of February, 1850, personally appeared before me, the subscriber, a justice of the peace in and for the said county, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, and each for himself made oath on the holy evangelists of Almighty God, that the several matters stated in the aforegoing answer as being within their respective knowledge are true, and that those which are not stated to be within their own knowledge they believe the same to be true as stated.

THOMAS C. DONN, *J. P.*

Exhibit No. 1.

Defendants' exhibit A, No. 1.

Inventory and appraisement of such part of the estate of Thaddeus Kosciusko as has come to the sight and knowledge of the appraisers.

Forty-six shares of stock in the Bank of Columbia, worth, at its par value, $100 per share - - - -	$4,600 00
Certificate number 90 of six per cent. stock of the United States, of the loan of 2d May, 1814, worth, at its par value - - - - - - -	11,363 63
Certificate No. 37, of same stock, worth, at its par value	1,136 36
	$17,099 99

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original "inventory," returned and filed on the 13th of November, 1821, by Benjamin L. Lear, the administrator, and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 16th day of January, in the year 1850. ED. N. ROACH, *Reg'r wills.*
[L. S.]

Exhibit No. 2.

Defendants' exhibit A, No. 2.

The first account of B. L. Lear, administrator, with the will annexed, of Thaddeus Kosciusko.

This accountant charges himself with sundry stocks, amounting, per inventory, to - - -	$17,099 99
And with the following sums, on account of dividends, to wit:	
From U. S. stock, to 13th November, 1821 - -	3,000 00
" Bank of Columbia, same date - - -	1,104 00
" same, to 28th May, 1822 - - -	92 00
" U. S. stock, to 18th June, 1822 - -	488 82
" Bank of Columbia, to 11th November, 1822 -	46 00
He also charges himself with certificate No. 81, U. S. 6 per cent. stock of 1812, purchased on account of the estate, under the direction of the orphan's court -	4,100 62½
	$25,931 43½

And he prays an allowance for the following payments, to wit:

Paid for letters, and for registering will, &c. - -	$6 00
" Gales & Seaton, for advertising notice, &c. -	1 50
" Jonathan Elliot, for same - - -	1 50
" register [of] wills, for two exemplifications, &c. -	1 60
" magistrate, for swearing appraisers - -	0 25
Allowed this accountant his bill of fees as attorney -	30 00
	$40 85
Allowed also a commission of 10 per ct. on $4,730 82, amount of dividends - - - -	473 08
And for payment of certificate No. 81, U. S. six per ct. stock of 1812 - - - - -	4,100 62½
	4,614 55½
Balance due and accountable - -	21,316 88
	$25,931 43½

DISTRICT OF COLUMBIA,
Washington county, to wit:

The 16th day of January, in the year 1823, came B. L. Lear, the administrator aforesaid, and made oath, on the holy evangely of Almighty God, that the aforegoing account, as it stands stated, is just and true, and that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit; which is allowed and passed.

Test: HENRY C. NEALE,
Register wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of July, in the year 1850.

[L. S.]

ED. N. ROACH,
Register wills.

Exhibit No. 3.

Defendants' exhibit A, No. 3.

The second account of Benjamin L. Lear, administrator, with the will annexed, of Thaddeus Kosciusko, deceased.

This accountant charges himself with a balance due on first account - - - - - - -		$21,316 88
And with the following sums, received on account of dividends, &c., on U. S. 6 per ct. stock, January 16th, 1823 - -	$562 50	
Same on same, February 13th, 1823 -	170 73	
Same, on stock of the Bank of Columbia, April 19th, 1823 - - -	46 00	
Same, on U. S. 6 per ct. stock, July 19th, 1823 - - - - - -	488 82	
Same on same, October 18th, (8th,) 1823,	244 41	
Same, on stock of the Bank of the Metropolis, January 1st, 1824 - - -	24 75	
Interest on Doctor May's note, March 5th, 1824 - - - - -	52 01	
On U. S. 6 per ct. stock, April 28th, 1824	488 82	
On stock of the Bank of the Metropolis, July 1st, (12th,) 1824 - - -	34 50	
Same, on U. S. 6 per cent. stock, November 17, 1824 - - - -	488 82	
Same, on stock of the Bank of the Metropolis, January 1st, 1825 - - -	255 00	

Same, on U. S. stock, March 14th, 1825 -	155 45	
Same on same, May 30th, 1825 - -	155 45	
Same, on stock of the Bank of the Metropolis, July 1st, 1825 - - -	225 00	
Same, on U. S. 6 per ct. stock, November 10th, 1825 - - - - -	310 90	
		3,703 16
And with a gain on certificate of U. S. 6 per ct. stock of 1812, for $3,794 24, which stock has been redeemed by the U. States at one per cent. advance, makes -		37 94
		$25,057 98
Also with a gain on certificate U. S. 6 per ct. stock of 1814, for $2,136 36, which stock has also been redeemed by the U. S. at 7¾ per cent., makes - -		165 57
He also charges himself with three hundred and sixty shares of stock of the Bank *of the Bank* of the Metropolis, (being an instrument in part of the proceeds of U. States 6 per cent. stock of 1812 and 1814,) near being redeemed, and par value $25, cost - -		7,570 00
		$32,793 55

And he prays to be allowed for the following payments, to wit:

Paid J. H. Baker, for copying exhibits in chancery, no receipt - - - - - -		$3 00
Allowed for expenses in visit to Mr. Jefferson, on business of estates, &c. - - - - -		41 00
Paid costs in suit of John Armstrong, no receipt -		12 73
And for payment on 10 shares of stock of the Bank of the Metropolis, at $19 - -	$190 00	
Same, for 11 shares of same, at $18 75 -	206 25	
Same, for 12 shares of same, at $18 75 -	225 00	
Same, for 13 shares of same, at $21 25 -	276 25	
Same, for 294 shares of same, at $21 25 -	6,247 50	
Same, for 20 shares of same, at $21 25 -	425 00	
		7,570 00
Allowed a commission of 10 per cent. on $3,906 67, the amount of dividends - - - -		390 66
		8,017 39
Balance due and accountable - -		24,776 16
		$32,793 55

DISTRICT OF COLUMBIA,
Washington county, to wit:

The 29th day of November, 1825, Benjamin L. Lear, administrator aforesaid, made oath, on the holy evangels of Almighty God, that the aforegoing account, as it stands stated, is just and true, [and that he has bona fide paid,] or secured to be paid, the several sums for which he claims a credit; which, upon examination, is passed by the court.

Test: HENRY C. NEALE,
Register wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original, filed and recorded in my office.

Witness my hand and seal of office, this 23d day of November, in the year 1826.

[L. S.]

HENRY C. NEALE,
Register wills.

Exhibit No. 4.

Defendants' exhibit A, No. 4.

Third account of Benjamin L. Lear, administrator, with the will annexed, of Thaddeus Kosciusko.

This accountant charges himself with a balance on last account, of - - - - - -	$24,776 16
And with the following sums, received as dividends, &c.:	
From Bank of Metropolis, January 10, 1826 - -	225 00
" U. States 6 per cents, March 14, 1826 - -	155 45
" Bank of Metropolis, July 10, 1826 - -	225 00
" U. States 6 per cents, October 5, 1826 - -	466 35
" U. States 4½ per cents, October 5, 1826 - -	17 88
" Bank of Metropolis, January 8, 1827 - -	270 00
" U. States 6 per cents, March 24, 1827 - -	155 45
" U. States 4½ per cents, March 24, 1827 - -	17 88
" U. States 6 per cents, July 31, 1837 - -	310 90
" U. States 4½ per cents, July 31, 1827 - -	35 76
" Bank of Metropolis, July 31, 1827	270 00
" U. States 6 per cents, October 11, 1827 - -	155 45
" U. States 6 per cents, certificate No. 335 -	16 17
" U. States 4½ per cents, October 11, 1827 -	17 88
" U. States 6 per cents, January 5, 1828 - -	155 45
" U. States 6 per cents, certificate No. 335, 1828 -	16 17
" U. States 4½ per cents, January 5, 1828 - -	17 88
" Bank of Metropolis, January 5, 1828 - -	270 00
" U. States 6 per cents, April 16, 1828 - -	155 45

From U. States 4½ per cents. April 16, 1828		17 88
" Bank of Metropolis, July 8, 1828		270 00
" U. States 6 per cents, July 16, 1828		155 45
" U. States 4½ per cents, July 16, 1828		17 88
" U. S. bank, on two shares, July 16, 1828		7 00
Carried over		$28,198 49
Amount brought over		28,198 49
He also charges himself with a certificate, No. 9, dated July 21, 1826, of U. S. 4½ per cts. stock, for $1,590 06 which, with brokerage, cost		1,600 00
And with a certificate, No. 335, dated 23d Aug., 1827, of United States 6 per cts., for $1,078 39, which, with brokerage, cost		1,100 00
Also with this sum, for which he was allowed a credit in his second account as commission on $52 01, erroneously charged to him in said account as interest on Dr. May's note		5 20
And with this sum, for which he was allowed a credit in his second account as commission on $37 94, erroneously charged to him in said account		3 79
And with two shares United States Bank stock, bought 16th June, 1828, at $122 50 per share	$245 00	
Brokerage paid on same, ¼ per cent.	0 61	
		245 61
Also with four shares, bought July 7, at $117 50 per share	$470 00	
Brokerage on same, ¼ per cent.	1 17	
		471 17
		$31,624 26

And he prays to be allowed for the following payments, to wit:

For register wills fees, per voucher, No. 1	10 14
For E. B. Caldwell's bill of defendants' fees in Supreme Court, in the suit of Armstrong vs. the Estate, per bill herewith, No. 2	20 51
For certificate, No. 9, of United States 4½ per cts., as per contra	1,600 00
For register wills, for copies of administration accounts, per bill, No. 3	2 75
	$1,633 40

The cash paid Mr. Wirt, by order of the orphan's court, for arguing the case of Armstrong vs. the Estate, in Supreme Court, per his receipt, No. 4		200 00
For certificate, No. 335, of United States 6 per cts., as per contra	$1,078 39	
Advance on same, 1¾ per cent.	18 87	
Brokerage, ¼ per cent.	2 74	
		1,100 00
For William T. Carroll, for defendant's fees in Supreme Court, in the suit of Armstrong vs. the Estate, per bill, No. 5		9 80
He also prays an allowance for the following, to wit:		
A commission of 10 per cent. on $17,099 99, the amount of the inventory which came into his hands in November, 1821		1,709 99
Also a commission on amount of dividends since last account, with which he is herein charged, $3,421 33		342 13
And for a loss on certificate, No. 81, of United States 6 per cents. of 1812, (sold the 22d November, 1824,) being the difference between its cost, ($4,100, $627,) and what it sold for, deducting brokerage, ($3,822 60,) for broker's bill herewith, the fall in price being occasioned by the near approach of the time of its redemption; and it was sold to be reinvested in Bank of Metropolis stock more advantageously		278 02
		$5,273 34
And for brokerage paid the sale of *of* $2,136 36, of the inventoried United States stock, which was sold to be more advantageously invested in stock of the Bank of the Metropolis		5 75
Also for this sum, with which he erroneously charged himself in his second account, 5th March, 1824, as interest on Dr. May's note		52 01
And for this sum, incorrectly charged to this accountant by the register in his second account, as again on the certificate, No. 81, of United States stock		37 94
And for two shares of United States Bank stock, bought at 22½ advance, with brokerage, June 16, 1828		245 61
And for four shares acc. 17½ advance, with brokerage, July 7, 1828		471 17
Also for loss on certificate No. 335, which cost $1,100, being paid at the Treasury, June 5, 1828, $1,078 39, difference		21 61
		6,107 43
Balance due and accountable		25,516 83
		$31,624 26

The above balance of $25,516 83, consists of the following stocks:

United States 6 per cents. of 1814 - - -	$10,363	63
Forty-six shares Bank of Columbia - - -	4,600	00
Both the above were inventoried stock, which the administrator received from Mr. Jefferson.		
	$14,963	63
And 360 shares of Bank of the Metropolis, of $25 each, for $9,000, cost - - - - -	7,570	00
Certificate No. 9, of $1,590 06, United States 5½ per cts., cost - - - - - - -	1,600	00
Six shares, of Bank of the United States, par value, $600, cost - - - - - -	716	78
	24,850	41
Amount brought over - - -	24,850	41
And in cash in hand - - - - -	666	42
	$25,516	83

DISTRICT OF COLUMBIA.
Washington county, to wit:

The 19th day of August, 1828, Benjamin L. Lear, the administrator aforesaid, made oath on the holy evangels of Almighty God that the aforegoing account, as stated, is just and true, and that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit; which is by the court allowed and passed.

Test: HENRY C. NEALE, *Reg. wills.*
Copy—test: HENRY C. NEALE, *Reg. wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original filed and recorded in my office.

[SEAL.] Witness my hand and seal of office, this 27th day of August, 1828.

HENRY C. NEALE, *Reg. wills.*

Exhibit A, No. 5.

Defendants' exhibit A, No. 5, referred to in the foregoing answer at page .

The fourth account of Benjamin L. Lear, administrator, with the will annexed, of Thadeus Kosciusko.

This accountant charges himself with a balance on last account of - - - - - - $25,516 83

And with the following sums received, dividends, &c.:

From U. S. 6 per cents., Oct. 21st, 1828	155 45
" U. S. 4½ per cents.. " " "	17 88
" U. S. 6 per cents., Jan'y 6, 1829	155 45
" U. S. 4½ per cents., " " "	17 88
" Bank of the Metropolis	270 00
" Wm. Williamson	9 86
" U. S. Bank, Jan'y 17th, 1829	21 00
" Wm. Williamson, interest, April 1, 1829	17 00
" U. S. 6 per cents., April 25, 1829	155 45
" U. S. 4½ per cents., " " "	17 88
" Wm. Williamson, July 1, 1829	19 25
" U. S. 6 per cents., " 3, "	155 45
" U. S. 4½ per cents., " " "	17 88
" Bank of Metropolis, " " "	270 00
" U. S. Bank, July 3, 1829	21 00
" U. S. 4½ per cents., Oct. 6, 1829	150 00
" Wm. Williamson, " 1, "	20 34
" same, Jan'y 4, 1830	21 99
" Bank of Metropolis, Jan'y 4, 1830	270 00
" U. S. 4½ per cents., " 6, "	150 00
" same, April 1, 1830	150 00
" W. Williamson, April 2, 1830	28 33
" same, July 2, 1830	30 00
" U. S. 4½ per cents., July 6, 1830	150 00
" Bank of Metropolis, " 7, "	270 00
He also charges himself with this sum paid him at the Treasury of the U. States for the certificate of 6 per cent. stock, July 3d, 1829	10,363 63
Amount brought over	
And with this sum received for six shares of U. S. bank stock sold	738 00
Also, with certificate No. 3 of U. S. 4½ per cents. of $11,000, cost	10,890 00
And with certificate No. 8 of U. S. 4½ per cents. of $748 59, cost	738 00
And with a mortgage of Wm. Williamson's	2,000 00
Also, with this sum received for stock of $6,500, being part of certificate No. 3 of U. S. 4½ per cents., sold September, 1830, for	6,653 95
And with Col. Bomford's bond and mortgage for	7,000 00
	$66,462 50

And he prays to be allowed for the following payments, to wit:

Paid register wills fees per voucher No. 1	6 81

Paid for certificate No. 3 of U. S. 4½ per cents. for $11,000, at 99, or 1 per cent. discount, on the 10 July, 1829, is		10,890 00
Paid for certificate No. 8 of U. S. 4½ per cents. for $743 59, at 99, or 1 per cent. discount, on the 12th August, 1829, is		736 16
Brokerage, ¼ per cent.		1 84
He also claims credit for the following sums of money lent to Wm. Williamson, on mortgage, by order of the orphan's court, viz:		
On the 21 October, 1828	$840 00	
On the 6 Jan'ry, 1829	309 86	
On the 1 April, "	17 00	
On the 27 " "	170 00	
On the 1 July, "	19 25	
On the 1 October, "	20 34	
On the 3 Nov'r, "	135 00	
On the 5 Jan'ry, 1830	394 00	
On the 2 April, "	94 55	
		2,000 00
Amount brought up		
And for the following sums of money lent to Colonel George Bomford on bond and mortgage, viz:		
On the 12 August, 1830	$412 50	
On the 21 Sept., "	6,587 50	
		7,000 00
He also claims a credit for the certificate of 6 per cent. stock of U. S. paid off, and with which he has charged himself in this account		10,363 63
And for the six shares of U. States bank stock sold, and with which he has charged himself in this account, which cost		716 78
Also, for this sum, being part of certificate No. 3, U. S. 4½ per cents. sold 18 September, 1830, with which he has charged himself in this account, cost		6,500 00
He prays also to be allowed a commission of 10 per cent. on $2,562 09, being the amount of the dividends received since last account, with which he is herein charged, is		256 20
		38,471 42
Balance due and accountable		27,991 08
		$66,462 50
Balance due and accountable brought down		$27,991 08
Which balance consists of—		
Bank of Col'a stock	$4,600 00	

Bank of the Metropolis stock, cost -	7,590 00	
U. S. 4½ per cents., cost - - -	6,728 00	
Williamson's mortgage - - -	2,000 00	
Bomford's mortgage - - -	7,000 00	
Cash - - - - - -	93 08	
		$27,991 08

DISTRICT OF COLUMBIA,
County of Washington, to wit:

The fifth day of February, 1830, Benjamin L. Lear, administrator, with the will annexed aforesaid, made oath on the holy evangelists of Almighty God that the foregoing account, as stated, is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

HENRY C. NEALE,
Register of Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 31st day of July, [SEAL.] in the year 1845.

ED. N. ROACH,
Register of Wills.

Defendants' exhibit A, No. 6, referred to in the foregoing answer at page .

The fifth account of Benjamin L. Lear, administrator, with will annexed, of Thadeus Kosciusko, deceased, by George Bomford, executor of Benjamin L. Lear, deceased.

This accountant charges himself with the balance due on account - - - - - - -	$27,991 08
And with the following money received since last account:	
From Wm. Williamson, interest - - -	30 00
From J. F. Webb, for 80 shares of Bank of Metropolis stock $2,000, at 87½ per cent. discount - -	1,750 00
From Wm. Williamson, this sum lent him - -	2,000 00
From same, interest - - - - -	34 00
From J. F. Webb, 20 shares Bank of Metropolis stock, $500, at 89½ per cent. discount - - -	447 50
From United States 4½ per cent. dividend - -	76 87
From Bank of Metropolis, same - - -	225 00
From United States 4½ per cent., same - -	76 87
From United States for certificate of 4½ per cent. stock -	1,594 02

For 160 shares Bank of Metropolis stock, at 89½ per cent. discount	3,580 00
From 18 shares Bank [of] Metropolis stock, at 90 per cent.	405 00
From United States 4½ per cent. stock, dividend	58 99
From Wm. Williamson, interest	20 00
From J. A. Smith, same	75 00
From United States 4½ per cent. stock, dividend	58 99
From Wm. Williamson, interest	25 00
From Col. Bomford, same	434 23
From Wm. Williamson, same	1 41
From United States 4½ per cent. stock, dividend	58 99
From Wm. Williamson, interest	25 00
From Bank of Metropolis, dividend	76 50
From same, same	76 50
From Col. Bomford, interest	105 00
From John A. Smith, same	75 00
From Jacob Swimley, same	70 00
Carried over	39,360 95
Amount brought over	39,360 95
From the Treasury [of the] United States for two certificates of 4½ per cent. stock paid off, one for $4,500, the other for $743.50	5,243 50
From Wm. Williamson, interest	25 00
From United States 4½ per cent. stock, dividend	58 99
From Washington Bank, same	129 06
From same, same	199 20
From R. R Gurley, for above	50 00
From same, same	50 00
From Wm. Williamson, interest	47 08
From John A. Smith, same	75 00
From R. R. Gurley, same	50 00
From Col. Bomford, same	210 00
From United States 4½ per cent. stock, dividend	76 87
	$45,575 65

And he prays credit for the following, which is allowed by the court:

Paid clerk's fees, no voucher	$4 69
Paid Henry C. Neale's fees, same	6 03
Paid for 20 shares Bank [of] Metropolis stock, at 87½	437 50
And this sum loaned to John A. Smith	2,500 00
Also to same to Jacob Swimley	1,000 00
Also to same to Wm. Williamson	650 00
For 75 shares Bank of Washington stock, bought of J. F. Webb at 85 per cent.	1,275 00
For 35 shares of Bank of Washington, 85 per cent.	595 00

For 100 shares of same, at 87½ per cent. - -		1,750 00
To this sum loaned to Wm. Williamson - -		1,016 66
To same to R. R. Gurley - - - -		200 00
To same to Wm. Williamson - - - -		1,000 00
To 116 shares Washington Bank, at 90 per cent. -		2,088 00
To this sum to Wm. Williamson - - -		666 67
To 6 shares Washington Bank, at 85 per cent. -		102 00
To this sum to Wm. Williamson - - -		250 00
And commission of 10 per cent. on $2,424 55 is -		242 45
Carried up - - - - -		
Amount brought up - - - -		
And for fees on this account - - - -		6 37½
		13,790 37½
Balance due by administrator W. A. - -		31,785 27½
		$45,575 65

Orphan's court, December 7th, 1838.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator with the will annexed de bonis non of Thadeus Kosciusko, deceased, and executor of Benjamin L. Lear, deceased, and made oath on the holy evangely of Almighty God, that the aforegoing account, to the best of his knowledge and belief, (that the above account, as made out from the books and papers left by the former administrator by his agent,) has been *been* examined and compared with the said books and papers, by the said Geo. Bomford, find it to be just and true.

Test: ED. N. ROACH, *Reg. wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I hereby certify, that the aforegoing is a true copy from the original, filed and recorded in my office.

Witness my hand and seal of office, this 8th day of December, 1838.

[SEAL.] ED. N. ROACH,
Register Wills.

Replication to answers.

Thereupon the said complainants, by their solicitors aforesaid, entered a replication to the answers aforesaid of the said defendants.

March term, 1850, *motion for commission.*

Whereupon the said cause was regularly continued at rules until

the fourth Monday of March, eighteen hundred and fifty, when the said complainants, by their solicitors aforesaid, moved the court here for a commission to take testimony.

Whereupon the defendant, Lewis Johnson, by his solicitor aforesaid, filed in court here his amended answer to the aforegoing bill of complaint, in form following, to wit:

Amended answer of L. Johnson.

The amended supplemental answer of Lewis Johnson, administrator de bonis non with the will annexed of Thaddeus Kosciusko.

To the bill of complaint of John Ennis, administrator de bonis non of J. Zolkowski and others; Samuel Williams, administrator of Martin Estko, and others, in chancery.

This defendant for further answer comes and says, that since the filing of his first answer in this behalf, and since the last continuance of this cause, circumstances have taken place which have made it necessary for him to alter that part of his first answer in which he admitted that he had in his hands, or under his control, stock in the Bank of Washington, so called or commonly known in the city of Washington, to the nominal amount of $5,580, but worth at the market value 60 per cent., as assets belonging to the estate of the said Kosciusko.

That upon an application by him to the said bank or the persons conducting the business thereof for the dividend due upon said stock on the first day of January, 1850, the payment thereof was refused to this defendant upon the pretence that the said stock upon which the said dividend was claimed by this defendant, in his capacity of administrator de bonis non of Thaddeus Kosciusko, was not stock or assets of said decedent, not theretofore unadministered upon before the appointment of this defendant as administrator de bonis non as aforesaid; and that consequently this defendant was not entitled either to the past or the accruing dividends thereon, and in effect was not entitled to have or control the said stock or any of its products. That consequently and until this question of right of property shall be decided, and unless it shall be decided by a court of competent jurisdiction in a final resort, that the said stock and its products belong to this defendant as administrator de bonis non aforesaid; and until the same shall have come into his hands and under his control, as part of the unadministered assets of the said Kosciusko, he, the said defendant, is obliged in truth and justice to say, as he now does, that he has no such or any bank or other stock in his hands as assets of the said Kosciusko; and that he is not and will not be bound to account for what he supposed he had of such stock under his control as set forth in his first answer. And he prays that he may be allowed to change that answer in this particular, and that this may be taken in its stead.

And he further amends and answers, that, previous to this pretence and refusal of said bank to allow this defendant to draw the dividends

on said stock up to the first January, 1850, they had acknowledged his right thereto, as administrator de bonis non aforesaid, and had paid him, as such, the dividends upon said stock to the 1st July, 1849; and that is the reason why this defendant, in his first answer, had admitted his control over said stock.

That this defendant had in his hands, at the time of the filing of his first answer in this cause, a balance of $200 28 remaining out of the dividends so paid to him, after deducting the payments made by him as mentioned in that answer.

That since then he has received from the said bank, for further dividends on said stock up to 1st July, 1849 - - $167 40

That after adding the above balance of - - - 200 28

367 68

And deducting payments made by him by order of the orphan's court of - - - - - 99 40

There remains in his hands, as administrator de bonis non aforesaid, the sum of - - - - - $268 28

That there will be various bills for costs and expenses incurred and to be incurred by him in the defence of this suit, and other matters connected with his duties as administrator de bonis non aforesaid, which will greatly reduce this sum; that he cannot state what will be the exact amount of such costs, but he will report the same to this court when ascertained; and he prays that such report, when made and accompanied by the proper vouchers, may be taken as a part of this his answer.

That this defendant confirms and repeats the answer he has heretofore made to the bill of complaint in this cause, as to all the other parts and points in said bill, only now denying, from a change of circumstances, that he has in his hands any stock of the Bank of Washington, commonly so known, or possesses any control over it; and he now avers, that there is an insufficiency of assets in his hands, as administrator de bonis non aforesaid, to pay all the demands against the said decedent, Thadeus Kosciusko.

And for further answer this defendant says, that he has no further funds or assets whatever in his hands or under his control, as administrator de bonis non of said Kosciusko, than the small amount as herein set forth as part of the dividends on said stock, which amount is subject to deductions to be hereafter ascertained.

Whereupon he prays that, in any judgment or decree of the court in this cause, he will be protected and held harmless from any admission about the control or possession of said stock made under a different state of circumstances, as set forth in his first answer, and that he may be saved harmless from all costs in these proceedings. And he now files, as exhibits, the letter of William Gunton, one of the trustees of said bank, and acting as president of said bank, so called, showing the refusal of said bank to recognise the right of said defendant, as adminis-

trator de bonis non aforesaid, to receive said dividend or control said stock; which exhibit this defendant prays may be taken as a part of this his answer, as exhibit A.

HENRY M. MORFITT,
Solicitor for defendant.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day personally appears, in open court, Lewis Johnson, who, being duly sworn upon the holy evangely of Almighty God, deposes and says, that the statements made in the within answer upon his own knowledge are true, and those made upon the information of others he believes to be true.

Test: JNO. A. SMITH, *Clerk.*
12th April, 1850.

Exhibit A.

BANK OF WASHINGTON, *March 8th*, 1850.

DEAR SIR: Your letter of the 10th ultimo, wherein, as administrator de bonis non of the estate of the late Thadeus Kosciusko, deceased, you claim payment of the dividends due on certain stock of this bank, was referred by me to the consideration of Johnson Hellen, esq., the counsel of this bank, and he has communicated to the board his opinion of the case, which is adverse to your claim.

You have drawn from this institution three several dividends on this stock, amounting in all to $446 40, and in the opinion of Mr. Hellen without due authority.

I have been directed by the board, therefore, to require the repayment of that sum; a request which I feel assured you will promptly comply with, the money having been inadvertently paid to you.

Yours, very respectfully,
W. GUNTON, *President.*

LEWIS JOHNSON, esqr.,
Administrator, &c., &c.

Replication to amended answer.

Whereupon the said complainants, by their solicitors aforesaid, entered a replication to the amended answer of Lewis Johnson aforesaid.

Decree pro confesso vs. Kosciusko Armstrong.

And the aforesaid absent defendant, Kosciusko Armstrong, set forth and named in the complainants' amended bill of complaint, having failed to appear and answer the said bill, after being thereto solemnly warned by publication as aforesaid, the said court, on motion of the

said complainants by their solicitor aforesaid, passed a decree pro confesso against him.

July rules, 1850.

Whereupon, the said cause was regularly continued at rules until the first Monday in July, 1850, when, on motion of the said complainants by their solicitor aforesaid, commission to take testimony issued to John Carroll Brent, John F. Callan, and William T. Swann, in form following, to wit:

Commission to take testimony.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to John Carroll Brent, John F. Callan, and William T. Swann.

Know ye, that you are appointed commissioners to examine evidences in a cause depending in the circuit court for the county of Washington, in the district of Columbia, between John F. Ennis, administrator de bonis non of Joseph Zolkowski and others, complainants, and Jonathan B. H. Smith, administrator of George Bomford, and others, defendants. Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered on the holy evangely of Almighty God, touching their knowledge or remembrance of any thing that may relate to the cause aforesaid, touching the interrogatories hereto annexed; and that you cause notice to be given to the parties, or their attorneys, of the execution of this commission, before you execute the same; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hands and seals, to the judges of the said circuit court, with all convenient speed.

Witness the honorable W. Cranch, esquire, chief judge of the said court, the eleventh day of June, in the year of our Lord one thousand eight hundred and fifty.

Issued the 16th day of July, 1850.

JNO. A. SMITH, *Clk.*

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and wit-

nesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to, and left with, you by either of the said parties. So help you God.

J. F. CALLAN,
JOHN CARROLL BRENT,
W. T. SWANN.

Subscribed and sworn to before me, a justice of the peace in and for the county of Washington, District of Columbia, August 2d, 1850.

J. W. BECK, *J. P.*

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe, the depositions of all and every the witness and witnesses produced before and examined by the commissioners John Carroll Brent, John F. Callan, and W. T. Swann, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners to take, write down, and transcribe the said depositions, or any of them. So help you God.

ALEX. X. YOUNG, *Clerk.*

Sworn to and subscribed before us, commissioners named above.

J. F. CALLAN.

The complainants, by their solicitors, file in court the following interrogatories:

Circuit court of the District of Columbia, for Washington county.

JOHN F. ENNIS, administrator de bonis non of Joseph Zolkowski, and others
vs.
JONATHAN B. H. SMITH, administrator of George Bomford, and others.
} In chancery. No 547.

Interrogatories to examine the recorder of wills of the orphan's court for the district of Columbia.

1st. Your name, &c.

2d. Had the late George Bomford, administrator de bonis non of Kosciusko's estate, in his lifetime settled the account of assets of that estate with the orphan's court; and if so, please produce those accounts or their office copies.

3d. Have the heirs of General Thadeus Kosciusko, or persons claiming to be his next of kin, or their counsel, filed and proved at any time, in the orphan's court, any papers relating to their pedigree? If so, please to produce those papers, and state whether they were filed and proved ex parte, or in the regular course of judicial proceed-

ings; please also to produce depositions and other papers, if any are under your care, and relate to this matter.

4th. Did you issue letters of administration de bonis non of Kosciusko's estate, to Lewis H. Johnson, with the wills of 1798, 1806, and 1816 annexed, or with only any one of them.

G. TOCHMAN,
Solicitor for complainants.

True copy.
Test: JNO. A. SMITH, *Clerk.*

Circuit court of the district of Columbia for the county of Washington.
In chancery.

JOHN F. ENNIS, administrator de bonis non of Joseph Zolkowski and others,
vs.
JONATHAN B. H. SMITH, administrator of George Bomford and others.
} No. 547.

Interrogatories to prove a foreign law.

Interrogatories to prove a foreign law relating to the effect of certain documents, &c.

1st. Your name, &c.?

2nd. Are or are you not acquainted with the law of Lithuania, a part of Poland, incorporated with Russia; if so state what court or tribunal in that country is competent to decide upon a family pedigree; what is the form of proceeding in such cases, and whether persons against whom the decree of pedigree is to be produced in evidence to recover inheritance or other property ought to be *to be* made parties to the proceedings upon which a decree of pedigree is obtained?

3d. Please to examine the documents and translations of these documents exhibited to you, and state whether you know any of the seals affixed to these exhibits; if so, specify the seals which you know, and say whether you consider them to be genuine or not; say also whether these papers, or any of them, in such form as they are, would be received in evidence in the courts in Lithuania.

G. TOCHMAN,
Solicitor for complainants.

True copy.
Test: JOHN A. SMITH, *Clerk.*

Deposition of witnesses produced, sworn, and examined on Friday, the 2d of August, 1850, at the law office of John Carroll Brent, one of the commissioners, by virtue of a commission issuing from the circuit court of the District of Columbia, to us, John Carroll Brent, William T. Swann, and John F. Callan, for the examination of witnesses in a cause there depending, between John F. Ennis, administrator de bonis

non, of Joseph Zolkowski and others, complainants, and Jonathan B. H. Smith, administrator of George Bomford, and others, defendants; we, the acting commissioners under the said commission, and also the clerk by us employed in writing, transcribing, and engrossing the said depositions, having first duly taken the respective oaths annexed to the said commission, according to the tenor and effect thereof, and as thereby directed, in the presence of Gaspard Tochman, William Redin, and John Marbury, mentioned in the accompanying notice marked , proceeded to examine the witnesses produced in the manner following, to wit:

Deposition of Edward N. Roach.

Edward N. Roach, of the city of Washington, District of Columbia, aged 50 years, a witness produced, sworn, and examined by virtue of the commission aforesaid, and upon interrogatories accompanying the same, deposeth and saith as follows:

1st. To the first interrogatory this deponent saith: My name is Edward N. Roach, register of wills, county of Washington, District of Columbia.

2d. To the second interrogatory this deponent saith: Yes. (The witness here produced official copies from the originals filed and recorded in this office, numbered from one to nine included, and herewith annexed.)

3d. To the first part of interrogatory number three this deponent saith: (Here Mr. Marbury and Mr. Redin objected to the whole of the interrogatory three, and to the legality and admissibility of the testimony given under it.) Persons claiming to be heirs to this estate have filed and proved in the orphan's court two original papers, marked A and B, and one translation of each of these papers relating to their pedigree. (Commissioners herewith annex said papers A and B.)

To the second part of interrogatory three this deponent saith: That they were filed and proved in the regular course of judicial proceeding.

To the third part of interrogatory three this deponent produced the papers hereto annexed, marked C and D.

4th. To the fourth interrogatory this deponent saith: Yes, I issued letters of administration de bonis non to Lewis Johnson on the wills of 1798, 1806, and 1816, annexed, and not upon any one of them alone.

ED. ROACH.

In obedience to the subpœna, hereunto annexed and marked E, Philip R. Fendall appeared, the commissioners having granted a certificate of his non-appearance, at a quarter to one, p. m.; and the said commissioners not finding any interrogatories to be propounded to Mr. Fendall in the commission, and not deeming themselves, therefore, authorized to put any questions, declined to examine him.

Henry Kalussowski, of Cabel county, State of Virginia, aged about 45, a witness produced, sworn, and examined by virtue of the commis-

1972.

sion aforesaid, and upon interrogatories accompanying the same, deposeth as follows:

Deposition of Henry Kalussowski.

To the 1st interrogatory this deponent saith: "My name is Henry Kalussowski, a native of Lithuania, a part of Poland, now under the dominion of Russian Government, student of the law in the university of Wilno, from the year 1823 to the year 1826 inclusive, now in my 45th year, and now residing in the State of Virginia.

2d. To the second interrogatory this deponent saith: I am acquainted with the laws existing up to the year 1832; some of the laws since that time have been changed; some remain as they were; the law of genealogy has not been changed. The court called the assembly of the nobility, composed of deputies from each district, to judge of the pedigrees and genealogies of the nobility. There is another court to judge of all other persons not nobles. The form of proceeding in such cases is by petition. It is necessary to produce documents and witnesses. If the proceeding be to establish pedigree, with reference to the inheritance, the court of the assembly decides without notice to any of the parties; if it is a claim of inheritance, another court has to decide.

3d. To the third interrogatory this deponent saith: Number A (decree of genealogy and inheritance) is sealed with the Government of Grodno's official seal. The seal on the last written page is a private seal of the secretary of the assembly of nobles. On document, letter B, the seal is the official seal of the court of the district of Cobrin, in the government of Grodno; and the other is the official seal of the vice governor of Grodno. The third seal is broken, and I do not now recognise it, but think I have seen and recognised it before in the orphan's court of this district. I believe the seals and documents to be genuine. There are no seals on either translation. These papers, in the form they are, would be received in evidence in any court in Lithuania.

HENRY KALUSSOWSKI.

The commission adjourned until Saturday, 3d August, at 10, a. m.

Saturday, 3d August, 1850.

The commissioners met at 10, a. m., according to adjournment. Present, John Carroll Brent, John F. Callan, William T. Swann, commissioners; Alexander X. Young, clerk.

Henry Kalussowski, the witness examined yesterday, came in, and made the following additional statement by way of explanation:

"The private seal on last written page of document lettered A, I stated yesterday, was that of the secretary of the assembly of nobles. It is the seal of the acting governor of Grodno, who has ex officio the right to use his own private seal on public documents."

In explanation, and as addition to his answer to the first interrogatory, the deponent stateth: "In 1830, before the revolution of Poland, I was elected judge of district of Selsze; in 1831, the year of the re-

volution, before I joined the army, I was a member of the provincial government of Lithuania; in 1847, in October, I gave my deposition more ample, because I can write English better than I can speak it, and in consequence of having written the same when before the orphan's court. On that occasion the seals on document A and B, submitted to me yesterday, were in better preservation, and therefore I could then identify them more precisely.

HENRY KALUSSOWSKI.

Deposition of Jno. Tyssowski.

John Tyssowski, of the city of Washington, District of Columbia, aged about 39 years, a witness produced, sworn, and examined by virtue of the commission aforesaid, and upon interrogatories accompanying the same, deposeth and saith, as follows:

To the first interrogatory this deponent saith: "John Tyssowski; I am at present a resident of Washington, District of Columbia; I am 39 years of age; I was, in the year 1846, President of the Republic of Cracow; my profession was that of a practising lawyer in the city of Lemburgh, the capital of Gallacia, a part of ancient Poland; I arrived in the United States on the 2d July, 1847, and immediately declared my intention of becoming a citizen of the United States.

2d. To the second interrogatory this deponent saith: "I am acquainted with the laws of Lithuania, a part of Poland, incorporated with Russia. To decide upon a family pedigree of a noble family, the assembly of the nobility is competent and none other. The form of proceeding is a petition of the party asking for a decree of pedigree, and the assembly decides upon the documents and evidences produced by the party petitioning. The petition is a simple one without any notice whatsoever. To show what I mean by notice, I explain. In case where a party, for instance, A sues another party B, for the recovery of a sum or any property, the party B must be made party to the action by a legal act which I called notice; when in judicial proceedings about the pedigree, no notice at all is required. The decree of the assembly of the nobility upon the proceedings following such petition is a decree in rem, and affects every body in all the courts of Lithuania. Here (Messrs. Marbury and Redin object, and protest to the third part of this interrogatory number two, beginning with the words "and whether persons," &c.,) and the witness then proceeded with his answer as follows, to this third branch he answers, no. To the third interrogatory this deponent saith. The seal on the next to the last written page of document A is a government seal of Lithuania; the other is a private or family seal; and on the last written page, the seal on the 4th written page of document B is the seal of the court of governmental district of Kobryn, in Lithuania. On the fifth page are two seals; the first one is a government seal, but I cannot say of what city; the other is defaced, and therefore I cannot recognise it; of the seal on the 6th page I cannot say anything, it being also defaced; the seal on page 17th

I do not recognise, it being defaced; the others being American seals I cannot judge of them; I pronounce genuine the seal of the court of Kobryne, the 1st seal on the 3d page of document B; of the others in this document I cannot judge; I pronounce the seal on the 20th page of document A to be genuine; the other being a family seal, I cannot judge; I cannot judge the original papers, because I do not understand the Russian language in which the originals are written, but as far as I can judge from the translations handed to me, and lettered A and B, I declare that both of them, as far as they contain the decrees of the assembly of the nobility, have the prescribed legal form, and would be recognised and acted upon as genuine, and *and* recorded as evidence by any court of Lithuania; both of these decrees are followed by the usual legalizations prescribed by law, if any legal document is to be used in a foreign country; and in regard to these legalizations, I have to state, with reference to my above recognition of the seal on the 21st page of document A, that according to the existing laws the public officers legalizing judicial documents with their signature, have to use as a seal, not the seal of the office, but their family *court* of arms.

There are no seals on the translations.

The witness here made the following statement in addition to, and explanatory of his answer to the second branch of interrogatory number two: The assembly of the nobility decided only on the pedigree of the nobility; the pedigree of plebians is decided by the city courts, or municipal courts.

JOHN TYSSOWSKI.

Cross interrgatories.

The following cross interrogatories were propounded to John Tyssowski, witness on the part of the plaintiff, by John Marbury and William Redin, counsel for Jacob Gideon and others, defendants.

State in what language the proceedings of courts of the assembly of the nobility in Lithuania, in Poland, were carried on and recorded in the year 1843, and previous thereto; and the filing of this cross interrogatory under the 26th rule of the rules of the Supreme Court of 1822, having been dispensed with by Gaspard Tochman, counsel for John F. Ennis, administrator de bonis non of Joseph Zolkowski and others, complainants, the said cross interrogatory was propounded, and the deponent answered as follows: Since the incorporation of Lithuania into the Russian empire, the nationality was guarantied, and of course every body had a right to use the Polish language in judicial transactions, but it was not forbidden to any body, but even looked upon favorably by the Russian Government. If the Russian language was used in such transactions, the records were kept in the language of the original transaction. But this state of things changed since the period embraced between 1840 and 1842; gradually the Russian Government endeavoured to deprive the Lithuanian people even of the use of the Polish language; first by indirect means, and at last by special laws or

ukases, the use of the Polish language was banished from the courts, and of course since that time the proceedings, petitions, and records, must be kept in the Russian [language.] In 1843, the proceedings of the court of the assembly of the nobility in Lithuania were carried on and recorded in the Russian language.

The following cross interrogatory was then also propounded to the said witness:

No. 2. Cross interrogatory. State whether it be or not necessary to make a copy of a decree of the court of the assembly of the nobility in Lithuania admissible as evidence in another court in said province in a cause depending in said court, and involving the title to property, that the same should be certified by some officer of said court, and what officer, to be a true copy from the records of said court of the nobility.

To which the witness answered as follows:

"Whenever the assembly of the nobility issues a decree, it issues it in as many originals as there are parties petitioning for the decree. One original record is left in the archives, tied together with a string, jointly or together with the whole proceedings. This constitutes the whole record. Copies taken from that record, if taken privately, are of no use at all. If certified by the register of the office to be true copies, they may serve as information for parties. No court will act upon them. Persons wishing a decision of any court based upon a decree of the assembly of the nobility, have to produce the original decree delivered to the parties.

The original decrees A and B are in the proper form, judging of them by the translations.

JOHN TYSSOWSKI.

The commissioners adjourned to 11 a. m. on Wednesday next.

Third day, Wednesday, August 7th, 1850.

The commissioners met pursuant to adjournment this day, shortly after 11 a. m.

Present, John Carroll Brent [and] William T. Swann, commissioners.

ALEXANDER X. YOUNG, *Clk.*

The commission adjourned to meet on Monday next, the 12th instant, at 11 o'clock.

Fourth day, Monday, August 12th, 1850.

The commission met pursuant to adjournment, at 11 a. m.

Present, John Carroll Brent [and] William T. Swann, commissioners.

ALEX. X. YOUNG, *Clerk.*

Major Gaspard Tochman presented a notice signed by himself, ad-

dressed to P. R. Fendall, esq., dated the 8th August, 1850, requesting Mr. Fendall to deliver to him certain papers before this commission is closed. On motion of Major Tochman, the commission adjourned over until to-morrow, the 13th instant, at 11 a. m., in order to receive the answer of Mr. Fendall.

5th day, Tuesday, August 13th, 1850.

The commission met according to adjournment, at 11 a. m.

Present, John Carroll Brent [and] William T. Swann, commissioners.

ALEXANDER X. YOUNG, *Clk.*

Whereupon Gaspard Tochman said that Philip R. Fendall, esq., having failed to produce, on the 2d instant, the papers specified in the subpœna marked E, he, the said Tochman, caused to be served on him a notice already referred to, with two translations of the powers of attorney specified in said notice, which he received from Europe after the 2d instant, requiring said Fendall to deliver up to him certain papers, some of which he intended to produce and prove before this commission, although he considers the evidence already produced and proved sufficient. Mr. Tochman further said, Mr. Fendall having not complied with the request contained in said notice, he, said Tochman, files the original notice, marked G, with the affidavits of Mr. Tyssowski annexed thereto, who served the said notice on Mr. Fendall. And he further says, by way of explanation of the subject matter relating to Mr. Fendall, that said Fendall produced the papers specified in the subpœna and notice aforesaid, other witnesses were to be examined to prove them. There was, he says, no intention to examine Mr. Fendall, the wording of the subpœna to the contrary notwithstanding. This explanation, Mr. Tochman says, is made by way of protest or exception to the statement of the commissioners, at page 3 of commission, that they did not examine Mr. Fendall, no interrogatories having been filed with said commission whereupon he could be examined.

Mr. Redin appeared, and with the consent of Major Tochman, complainants' counsel, filed three papers, lettered respectively H, I, and K.

Whereupon Major Tochman moved that the commission be closed and returned, and the commission adjourned accordingly.

JOHN CARROLL BRENT,
WM. T. SWANN, *Commissioners.*
ALEX. X. YOUNG, *Clk.*

The following paper, marked A, is referred to in the foregoing interrogatories and answers:

"A.

"*Translated from the original document of the Russian language.*

May 7th, 1843.

By the order of his Imperial Majesty, the assembly of the nobility

of Grodon heard the memorial of the sole heirs of the deceased, Thadeus Kosciuszke, a general of the Polish and American army, which is of the following tenor:

The noblemen of the county of Kobryn, Roman, son of Thadeus Estko, acting in his own name and in that of his married sister, Louisa Narbut, and of his cousin, Hippoletus, son of Stanislaus Estko, of the county of Wolkiwyski; John, son of Charles Zolkowski, and secretary of the state; Michel, son of Ignatius Szyrma; Captain Vladislaus and Hippolitus, sons of Ignatius Wankowicz, appeared personally, and exhibited the degree of their relationship to the deceased, Thadius, son of Louis Kosciuszke, of Siechwicze, a general of the Polish and American army, who died in Switzerland in 1817, in order to receive after his (Kosciuszke's) death real and personal property left by him in the United States of North America. They delivered their documents, proving their descent from the sisters of the deceased, General Thadeus Kosciuszka, and pray for a decree to be given to them on the lawful basis, in triplicate, formed from their documents, together with the family genealogy, and to return to them the original documents.

On the perusal of the documents presented with their petition, it appears that Louis Kosciuszke, a sword bearer of the department of Brzesë, had two sons, viz., Joseph, chief of the camp in the department of Brzesë, and Thadeus, a general of the Polish and American army, and also two daughters—Anna, married to Peter Estko, officer of the King's table in the department of Smolensk, and Catharine, married to Charles Zolkowski. It does further appear that the descendants of Anna Estko and Catharine Zolkowsk are lawful heirs, after the death of their brothers, Joseph, chief of the camp in the department of Brzesë, and General Thadius Kosciuszke, both of whom having died without any issue.

The heirship is proved by the following documents, viz:

1st. A deed, bearing date of the 6th of July, 1767, wherein Thechla (born Ratomska) Kosciuszke conveys her life estate to the real and personal property of Siecknowicze (given to her by her husband, Louis Kosciuszke, sword bearer of the department of Brzesë) to her sons, Joseph and Thadeus Kosciuszke, and the said deed was made and executed the same day of the month and year in the city court of Brzesë.

2d. The power of attorney given Thadeus Kosciuszko, captain of the corps of cadets, to his brother-in-law, Peter Estko, officer of the King's table, of Smolensk, to act with his brother, Joseph Kosciuske, chief of the camp of Brzesë, in the division of the property left by their parents, Louis, sword bearer of the department of Brzesë, and Theckla (born Ratomska) Kosciuszke, of Siechnowieze; said power of attorney was given on the 10th day of October, 1775, and recorded in the court of Brzesë, on the 30th day of January, 1776.

3d. The agreement between Joseph Kosciuszke, chief of camp, Peter Estko, stolnik of Smolensk, and Anna Estko, (born Kosciuszke,)

his wife, together with the power of attorney given by Captain Thadius Kosciuszke to Peter Estko on the 16th day of January, 1777, was on the next day acknowledged in the court of Brzesë, with this agreement, that all pretensions to the heirship, after their parents, should be left to the decision of the court of arbitration.

4th. The decision of the court of arbitration, made on the 21st day of July, 1777, and recorded in the court of Brzesë, by which it appears that after the death of Louis Kosciuszke, sword bearer of the State of Brzesë, and his wife, Theckla (born Ratemska) Kosciuszke, they left sole heirs to their property two sons, Joseph, chief of the camp in the State of Brzesë, and Thadeus Kosciuszke, captain of the corps of cadets; also two daughters, Anna Kosciuszke, wife of Peter Estko, officer of the King's table in the department of Smolensk, and Catharine Kosciuszke, wife of Charles Zolkowski, flag bearer of Wolkowski. The decision of the court of arbitration divided the property into two equal parts between their sons, viz., Joseph, chief of the camp, and Captain Thadeus Kosciuszke, with the proviso that their daughters, Anna Estke and Catharine Zolkowski, should have ten thousand of Polish florins as a dowry left to each of them by their mother.

5th. On the 19th day of June, 1789, two writs of suits were issued by the creditors of Joseph Kosciuszke, chief of the camp, against his brother, general of the American army, as the heir to all the property of the deceased brother Joseph.

6th. Two writs of suit, issued by General Thadeus Kosciuszke against all of [the] Zolkowskis, viz., on the 9th day of August, 1789, and on the 23d day of April, 1792, by which it appears that Thadeus Kosciuszke relinquished all his rights of heirship to the property left by his brother, Joseph Kosciuszke, who died a bachelor in the latter part of the year 1788, or in the beginning of 1789, without leaving any issue.

7th. The certificate of burial of Joseph Kosciuszko, dated 15th day of May, 1789, signed by the proper authorities of the parish of Wisnica.

8th. The certificate given by the circuit court of Wlodaw, in the kingdom of Poland, dated 19th February, 3d March, 1842, showed that Joseph Kosciuszke, brother to General Thadeus Kosciuszke and to Anna Estke, was a bachelor and died without any issue.

9th. The decision of the court of Brzesë, made 23d day of January, 1792, proved that after the death of Joseph Kosciuszke, his brother Thadeus became heir to all his property.

10th. From the power of attorney given by General Thadeus Kosciuszke, on the 24th day of February, 1792, to a nobleman Razieki, it appears that the overwhelming debts against the property left by his brother Joseph Kosciuszke, caused him (General Thadeus) to grant the power to Razieki of relinquishing in his name the heirship.

11th. The declaration of Razieki, the attorney of General Kosciuszke, made on the 29th day February, 1792, in the court of Brzesë, and

recorded on the same day, was recorded with the documents appertaining to the case of Thadeus Kosciuszke with the creditors of his deceased brother.

12th. The record of the decree of the 4th day of March, 1802, in the court of Kobrayn, with the decision in the case of Joseph, John, and Ignatius, sons of Joseph Zolkowski, with the creditors of Joseph Kosciuszke, by which it is proved that Joseph Kosciuszke was unmarried, and that there was no other heir except his brother Thadeus Kosciuszke. The sons of sword bearer of Brzesë, Louis Kosciuszke and Theckla, (born Ratomska,) his wife, of Siecknowieze, were as follows: Joseph, chief of the camp of Brzesë, and General Thadeus Kosciuszke, both of whom died and left no issue; consequently the only heirs after them, according to the laws of this country, were their sisters, Anna, wife of Peter Estke, officer of the King's table, in the department of Smolensk; and Catharine, wife of Charles Zolkowski, flagbearer of Walkowski, and from whom descended in the straight line, as follows, from the former descended Thadeus and Stanislaus, sons of Peter Estke, and from the latter descended Joseph, John, and Ignatius, sons of Charles Zolkowski, and Caroline, Brigida, Anna, and Helena, daughters of said Charles Zolkowski.

The *proves* of their genealogy as *as* follows:

Certificate (A) of the birth of Anna, 26th day of July, 1741.

Certificate (B) of the birth of Catharine, 29th day of December, 1744.

Certificate C of the birth of Joseph Matthias, 23d February, 1743; and D. of the birth of Thadeus Andrews Bonaventura Kosciuszke, on the 12th day of February, 1746, all lawful heirs of Lewis Kosciuszko and Theckla, (born Ratomska,) his wife; all said certificates are recorded in the parish of Kossow.

2d. Certificates of the marriage of the daughters of Lewis Kosciuszke, sword bearer of the State of Brzesë.

Certificate (A) of the marriage of Anna to Peter Estko, officer of the King's table, October 24th, 1762.

Certificate (B) of the marriage of Catharine to Charles Zolkowski, flag bearer of Wolkowski, 23d January, 1763, all of which are recorded in the parish of Kossow.

3d. Certificates of birth of the sons of Peter Estko and Anna, (born Kosciuszko,) his wife.

Certificate (A) of the birth of Stanislaus, on the 11th November, 1763.

Certificate (B) of the birth of Thadeus, on the 1st January, 1770, both recorded in the parish of Kossow.

Certificate of interment.

Certificate (C) of Peter Estko, officer of the King's table, buried in Wisznica, April 30, 1787.

Certificate (D) of Anna Kosciuszke, wife of Peter Estko, buried in the parish of Wielce, February 6th, 1814.

Certificates of births of the children of Thadeus Estko and Catharine, (born Lachowicz,) his wife.

Certificate (E) of the birth of Roman, 9th day of August, 1803.

Certificate F, of the birth of Martina, 1st day of January, 1806.

Certificate G, of the birth of Louisa, 17th day of October, 1809, all of which are recorded in the parish of Wielce.

4th. Certificate of the burial of Thadeus, son of Peter Estko, 25th day of August, 1812, in Zbiegon.

5th. Certificate (A) of the marriage of Stanislaus Estko to Theckla Osiecha, 23d of August, 1796, recorded in the parish of Wisznica.

Certificate (B) of the birth of Hippolitus Joseph Augustin, son of Stanislaus Estko, on the 13th day of August, 1801, recorded in Radnowice.

Certificate (C) of the burial of Stanislaus Estko, 7th day of June, 1820, recorded in the parish of Wielce.

Certificate (D) of an investigation made by the judge of the county of Zamozsë, on the 10th day of July, 1820, by which it appears that the deceased Stanislaus Estko, left but one son, Hippolitus Estko, by his first wife, Thechla Osiecha, and that no other issue was left.

6th. Certificate of baptism of John Zolkowski, on the 9th day of February, 1765, recorded in the parish of Wolkowyski; all of the foregoing certificates were given in authenticated copies, approved and sealed by the local consistories.

7th. Four depositions of witnesses taken on oath in the court of Kobryn, and confirmed by his excellency the governor of the nobility of Grodno, and the governor general of Wilno, proved that the noblemen Estkos and Zolkowskis are the nearest heirs of the deceased of Thadeus Kosciuszke, general of the Polish and American army; that Louis Kosciuszke, sword bearer of the State of Brzesë and Theckla, (born Ratomska,) his wife, died and left but four children, viz., Joseph Kosciuszke, Thadeus Kosciuszke, Anna Estko, and Catharine Zolkowski.

8th. The proceedings of the examination of two documents, made by the deputy council in the case of the family descent of Zolkowski, from which it appears that the property was divided by *comprise* between Charles Zolkowski and Joseph, John, and Ignatius, his sons; the first of the said documents bearing the date of 23d October, 1789, and the second of the 28th of January, 1793. It does further appear, that Charles Zolkowski had four daughters by Catharine Kosciuszke his wife, to wit, Caroline, Brigida, Anna, and Helena; that the inheritance, which after the death of General Thadeus Kosciuszke descended in the direct line to Hippolitas, son of Stanislaus Estko, is conveyed to Catharine Lachowiez, wife of the deceased Thadeus, son of Peter Estko. In the line of John, son of Charles Zolkowski, flagbearer of Walkowski, it was conveyed to Adam, son of Joseph Bychowice, flag bearer of Wolkowyski. In the line of Joseph, son of Charles Zolkowski, it is due, in one part, to the secretary of state,

Michel, son of Ignatius Szyrma; and, in the other part, to the grandchildren of his brother, Ignatius Zolkowski; in the line of said Ignatius, son of Charles Zolkowski, it descended to his grandchildren, Captain Vladislaus Wankowiez and Hippolatius Wankowiez, sons of his daughter Izabella married to Wankowiez. The petitioners, in order to prove the foregoing, and the genealogy of their family, exhibited the following documents, viz:

1st. A deed given by Hippolitus Joseph Augustus, son of Stanislaus Estko, bearing date 7th of July, 1825, and acknowledged at the same time in the office of the clerk of the city of Hrubiszon, by which all the property left to him (Hippolitus) by his father Stanislaus, and his grandmother Anna, sister of General Thadeus Kosciuszko, be conveyed to Catharine Lachowiez, wife of his deceased uncle Thadeus, son of Peter Estko.

2d. A deed given by John, son of Charles Zolkowski, flag bearer of Wolkowyski, to Adam, flag bearer of Wolkowyski, son of Joseph Bychowiece, bearing date 16th June, 1838, and on the same day and year proved in the department at assembly of nobles of Grodo, by which deed all the property left to him by his deceased uncle, Thadeus Kosciuszko, General of the Polish and American army, he assigned it to the aforesaid Bychowiec.

3d. The will of Joseph Zolkowski, made on the 7th day of December, 1835, and recorded on the 10th day of May, 1836, in the county court of Wolkowyski, by which he divided the property left to him by his mother Catharine, sister of General Thadeus Kosciuszke, between noblemen Michael, son of Ignatius Szyrma, and the grandchildren of his brother Ignatius Zolkowski.

4th. The marriage certificate of Ignatius Wankowiez with Izabella, the daughter of Ignatius Zolkowski, 24th day of June, 1806, and recorded in the parish of Wilno, the copies of which are duly authenticated by the Roman Catholic Consistory of Wilno.

5th. A bill of sale of the village of Powidaki, and the peasants situated in the county of Wilno, given by Izabella and Ignatius Wankowiez to Joseph Urbanowicz, said bill bearing date 23d of April, 1810, and recorded on the 27th day of April, of the same year, in the court of Wilno; in that bill of sale is mentioned the aforesaid property, that is to say, the property which Izabella Wonkowicz inherited after her deceased parents, Ignatius and Barbara Zolkowski.

6th. The certificates of baptism.

Certificate (A) of Hippolitus, dated 2d day of August, 1809; and certificate (B) of Vladislaus, dated 8th day of September, 1810, both sons of Ignatius Wankowicz; said certificates are recorded in the parish of Ostrowiec, and authenticated by the Roman Catholic Consistory of Wilno.

7th. The certificate of the marshal of the nobility of the county of Wilno, dated 8th February of this year, No. 181, proves that Captain Vladislaus Wankowicz and Hippolitus Wankowicz, the commissioners of the govermental stores of provisions of the villages, are (because of

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the unknown absence of their mother Izabella (born Zolkowski) Wankowicz since the year 1821,) acknowledged by the ukaz of the departamental nobility of Wilno, and dated 12th day of October, 1839, No. 4,310, the heirs to the property which their father left to her, and therefore they have indisputable right to receive all the property belonging to their aforesaid mother.

Ordered, that by the foregoing documents it was proved that General Thadeus Kosciuszke had only one brother, Joseph, and two sisters, Anna and Catharine, both married; the former to Peter Estko, the latter to Charles Zolkowski; that Thadius and Joseph Kosciuszkos died without issue, and that from sister Anna were born Thadius and Stanislaus Estko; and from sister Catharine were born present petitioner, John, and the deceased Joseph and Ignatius; also four daughters, Carolina, Brigida, Anna, and Helena Zolkowskis; it does not appear whether these four daughters of Zolkowski are living, whether they were married and left any issue. That Thadeus, son of Peter Estko, left a son, the present petitioner, Roman Estko; a daughter, Louisa, married to Norbut, and an unmarried daughter, Martina; whether she is living or dead it does not appear. Stanislaus, son of Peter Estko, left a son, Hippolitus. Joseph, son of Charles Zolkowski, died without issue; Izabella, daughter of his deceased brother, Ignatius, was married to Ignatius Wankowicz; they left two sons, Captain Vladislaus Wankowicz and Hyppolitus Wankowicz.

Relying upon these genuine documents, from which the genealogical chart is made of the nearest heirs of General Thadius Kosciuszke, we confirm and grant to the petitioners, Roman, son of Thadius Estko, Adam, son of Joseph Bychowiec, and to Captain Vladislaus and Hippolitus, sons of Ignatius Wankowski, to each of them, a copy of the present decision, and of the genealogical chart, executed on lawful paper, and do return to them their authenticated documents, leaving on file copies thereof verified with the original documents.

The signatures on the original documents are as follows:

For the marshal of the department of Grodno.

Marshal of the nobility of the county of Grodno:

(Signed) LACHNICKI.

Deputies of the nobility:

(Signed) LAVICK KOLLENTAY,
MINTOWICK,
CHODAKOWSKI,
WATYNCEWICZ,
OWIERKOWICZ.

Secretary of the nobility:

(Signed) LIMONOWSKI.

Compared secretary:

(Signed) LIMONOWSKI.

Attest: Chief clerk of the bureau:

(Signed) ZADERNOWSKI.

May 7th, 1843.

By the ukase of his Imperial Majesty, the assembly of the department of Grodno grant an exemplified copy of their decision made on the 7th day of May, in the case of the heirs of General Thadeus Kosciuske; also genealogical chart of the descendants from Kosciuszke's sisters.

In testimony whereof we have hereunto subscribed our names and affixed the seal of the assembly of the nobility of the department of Grodno.

Marshal of the nobility of Grodno:
(Signed) POSLOWSKI.

Deputy of the nobility:
(Signed) RUDOLPH MINTOWICZ.

Deputy of the nobility:
(Signed) MICHEL OWIERKOWICZ.

Secretary of the nobility:
(Signed) LIMONOWSKI.

[L. S.] Attest: Chief clerk of the bureau:
(Signed) M. ZADERNOWSKI.

I hereby certify, that the foregoing signatures affixed to the decision of the assembly of the nobility of department of Grodno, is correct. Done in the city of Grodno, this 9th day of July, 1843. For the governor of the nobility, president of the treasury, department of the government of Grodno, high chancellor of state and chevalier.
(Signed) PETER NELEZYNSKI. [L. S.]

WASHINGTON, D. C., *February* 1, 1847.

I hereby certify, that the foregoing is a faithful translation from the Russian document made by me.

STEPHEN J. DALLAS.

Exhibit B, referred to in the foregoing depositions, page .

[TRANSLATION.]

Certificate No. 2484.

By order of His Imperial Majesty.

In consequence of the decision given on the 17th of the present month to the petition presented by Romanus, son of Thadeus Estko, proprietor in the district (Niesd) of Kobrin, who claims an inheritance of the property of his deceased grand uncle, Mr. ThadiusKosciuszke,

general of the Polish army and in the American service, jointly with Sir Adam, son of Joseph Bychowiec, proprietor in the district of Wolkowisk, (cornet,) Horunsky, and knight, and also with Mr. John, son of Charles Zolkowski, cornet, likewise in the district of Wolkowski; the court of Kobryn, in the province of Grodno, after having found true and lawful all acts presented, made inquiries, and in pursuance of such desire of Messrs. Estko and Bychowiece, now by these presents, witness:

1. That the late general of the Polish army and in the American service, Thadeus, son of Lewis Kosciuszk, died childless, in the year 1817, in Switzerland, was, without any doubt, a native from the department of Brzesë, (at present department of Kobrin,) in the service of Lithuania, formerly belonging to the kingdom of Poland, and called the department of Lithuania Grodno, since its restitution from Poland to the Russian empire; which is witnessed by the certificate of birth of the said Thadeus Kosciuszke, of February 12th, 1746, inscribed in the register of the Roman Catholic church of Koszowsk, from which also it appears that he was born of lawful parents, Lewis Kosciuszke, sword bearer of Brzesë, and Thekla Ratowska, his wife.

2. That the said General Kosciuszke, after the death of his parents and of his eldest brother, Joseph Kosciuszke, who died without leaving any heirs, in the department of Brzesë, which is shown (a) by the decision of the court of arbitration from the authenticated acts by the court of Brzesë, given on the 21st day of June, 1777; and (b) by the decision of the court of law, in the department of Brzesë, given on the 23d day of January, 1792, inherited a patrimonial estate called Siechnowice, and was residing there till he went abroad. That a part of his family estate, named Siechnowice, belonging to the General Kosciuszke, was transferred by a document given by him, and presented June 21, 1777, in the court of law in the department of Brzesë, to his brother-in-law, Peter, and to his full sister, Anne Estkos, and which to the present time is in possession of Kosciuszko's nephew, Romanus, the son of Thadeus Estko, proprietor in the district of Korbrin, one of the petitioners.

3. That Mr. Romanus Estko's sister, Martina, daughter of Thadeus Estko, and Catharine Lachowicz, deceased, unmarried and without heirs, on the 9th day of May, 1840, as is witnessed by the certificate of her burial in the register of the Roman Catholic church of Sberagocosk.

4. That Helena Zolkowske, by marriage Korosof, daughter of Catharine Kosciuszke, wife of Charles Zolkowski, died likewise without issue or heirs, is witnessed by a certificate of a clergyman of Korosof, inscribed in the court of law of the district of Wolkowisk, under date of the 16th June, 1833.

5. That according to the laws which existed in the country where General Kosciuszke was born, from his birth to his death in 1817, and afterwards till September 9, 1840, the period when these laws were

substituted by the general law of the Russian empire, it is enacted by the Lithuanian Statutes, part III, art. 17, s. 3:

"If by the Almighty's will, all full brothers should die, and none of them should leave heirs, and even if there should have been heirs and died, in such a case, all family estates and real property in whatever manner acquired, and every kind of goods, descended by right of succession to the sisters and their heirs."

As the decision of assembly of the nobility of Grodno, which was passed on the 7th day of May, in the present year, (1843,) agrees with the geneological chart made by the said assembly, it is fully established that General Kosciuszke had but one full brother, Joseph, who died without heirs, and two full sisters, Anne and Catharine, the former of whom was married to Peter Estko, and the latter to Charles Zolkowski; therefore, according to the above mentioned Lithuanian Statutes, part III, art. 17, s. 3, every kind of property and estate, wherever it may be found, belonging to the above named General Kosciuszke, at the time of his death, becomes the property of the heirs named in the geneological chart of the aforesaid his two sisters, Anne Estko and Catharine Zolkowski.

Given, signed, and ratified by the crown seal in the court of Kobrin, November 18th, 1843.

Signed, JACOD NIDACKI, *Judge*,
MICHAEL WOLKI, *Alderman*,
ANTHONY SAWICKI, *Alderman*,
[L. S.] WALICKI, *Clerk*.

No. 13,340.

The foregoing signatures, signed by Jacob Nidacki, judge; Michael Wolky, alderman; Anthony Sawicki, alderman; and Walicki, clerk, in my presence on the 9th day of December, 1843, in the city of Grodno.

(Signed) JANEWITZ JANEWSKY, [L. S.]
Vice governor ad interim of the province of Grodno.

No. 9,243.

I attest the above signature of the vice governor ad interim of the province of Grodno. Wilno, December 14th, 1843.

(Signed) Governor general of the province of Wilno, Minsk, and Kowno.

Lieutenant general:

[L. S.] MIRKOWITZ.

WASHINGTON, D. C., *October 7th*, 1847.

I certify that the foregoing is a true copy of a certificate translated from the Russian into the English language.

STEPHEN J. DALLAS.

1979.

The following is a translation from the original French, written on the document containing the translation made at St. Petersburgh, which is attached to the original Russian act, of which the aforegoing is a translation:

The ministry of foreign affairs attests that the foregoing translation has been made by their order, and certify, at the same time, the authenticity of the legalization affixed to the original document, by Lieutenant General Mirkowitz, the military governor of Wilno, and governor general of Grodno, Minsk, and Kowno.

In witness whereof the said ministry ordered to affix to these presents their seal. St. Petersburg, April 28th, 1844.

Director of the department of the interior:

(Signed) POLENOFF. [L. S.]

The chief of the section:

(Signed) POLENOFF.

WASHINGTON, D. C., *October* 18*th*, 1847.

I certify the foregoing to be a true translation.

STEPHEN J. DALLAS.

Exhibit C, referred to in the foregoing depositions at page .

D. SIR: I have called but find no court here. If the judge has allowed the paper offered as the copy of a will of Kosciusko to be filed and recorded, please enter on your record, "that I, in behalf of the ad'r of Kos'o, objected to such recording and protested against the same."

I wish this to appear on the record.

Friday morning, Jan. 15th, 1847.

Yours, truly,

J. B. H. SMITH.

E. ROACH, esqr., *Register, &c., &c.*

Orphan's court for the District of Columbia.

HYPPOLITUS ESTKO, Louisa Estko, by marriage Narbutt, Romanus Estko, John Zolkowski, Vladislaus Wankowicz, and Hippolitus Wankowicz, heirs at law and next of kin of General Thadeus Kosciuszke, deceased,
vs.
COLO. GEO. BOMFORD, administrator de bonis non of Kosciuszke's estate, with the will of 1798 annexed.

On this 22d day of October, 1847, in the case of said heirs at law and next of kin of General Thadeus Kosciusko vs. Colonel George Bomford, administrator de bonis non, with the will of 1798 annexed, summoned to show cause why his letters of administration de bonis non, with the will annexed, should not be revoked, and letters of ad-

ministration generally granted to such person or persons as said next of kin of Thadeus Kosciusko shall recommend.

Major G. Tochman appeared for the complainants, and John Marbury and J. B. H. Smith for the defendant. Whereupon Major G. Tochman stated, that the honorable Reverdy Johnson, who is a counsel of the next of kin of General Kosciusko, co-*in*jointly with himself, not being able to appear at this time on account of his being engaged in a cause in the court at Baltimore, he would move the court to postpone the hearing and consideration of this case until Friday next, the 29th of October, 1847; he would only proceed to examine the witnesses now being in the court, of whom one, Mr. Kalussowski, is living in the remote part of the State of Virginia, and is now on his way to Europe.

The counsel of the defendant said they *do* not consider the defendant as being in court, the summons to show cause, &c., having not been served upon him personally, and they having no instructions from him to appear in this case since the counsel of the complainants have changed their former proceedings.

To this the counsel of the complainants answered, that the summons to show cause, &c , was served upon the defendant, according to the order of this court, upon J. B. H. Smith, now in court, who is the counsel of record and agent of the defendant.

The court considering the defendant to be before the court, by his counsel and agent, ordered that the testimony of witnesses being in the court be taken immediately, and that the hearing of the case be postponed, as prayed for, until Friday next, the 29th of October, 1847.

Whereupon the counsel of the complainants called to the stand Mr. Kalussowski, witness. The counsel of the defendant, protesting against their appearing for the defendant, left the court.

Deposition of H. Kalussowski.

The witness called to the stand was then duly sworn, and according to law, to whom the counsel of the complainants submitted these the following interrogatories:

1st. Your name, age, place of birth; are you a citizen of the United States, and where do you reside?

Says: My name is Henry Kalussowski; 42 years; born in Karimiron, in Lithuania, government of Wilna; I came to this country in 1839, 20th December; I am [a] citizen of the United States; I reside in Cabell county, Virginia, on my own farm.

2d. Are you or are you not acquainted with the laws of Russia, and especially of the province of Lithuania; what were your pursuits in Lithuania; and do you know the Russian language?

I am acquainted with the laws of Russia in general, and the province of Lithuania in particular. I studied law in the university of Wilna, where I was graduated, and, before the revolution of 1830, I was judge of the circuit court in Selsze, in the province of Lithuania; and during the revolution, before I joined the army, I was a member of the gov-

ernment of said province. I know the Russian language, and am well acquainted with it.

3d. Please to state what court or office in Lithuania is the proper forum for deciding upon the pedigree of a family; upon what process or write are taken the proceedings to prove the pedigree; is it not necessary to give a notice to the party against which the decree of pedigree is to be produced as evidence in any civil cause for the recovery of succession or any property; and, should such notice be given, state whether it would be taken notice of by the court or office acting in the premises, or whether the party so notified would be made a party to the decree of pedigree.

Says: The proper forum for deciding upon the pedigree of a family in Lithuania, is the assembly composed of the deputies of the nobility, when the family belongs to the class of nobility, and when the families are not noble the proceedings are before the city courts; in both cases the proceedings are upon the petition, and in no case a notice is required by law to the party against which the decree of pedigree is to be produced as evidence in any court of justice, to recover any succession or any property. And should such notice be given, the party notified would not be made a party to the decree of pedigree, and no notice of it would be taken.

4th. Examine the document marked A, which is handed to you, purporting to be the exemplification of the decree of pedigree of General Thadeus Kosciusko and his next of kin, given on the 7th day of May, 1843, by the assembly of the nobility of Grodno, in Lithuania, and state whether this exemplification of the decree of pedigree was obtained from, and given by, the proper forum; whether the proceedings thereon were in such form as the law of Lithuania prescribed; whether it would be received as evidence in the courts of Lithuania; and whether you know any of the signatures in this exemplification of the decree, or any of the seals affixed thereto.

Says: The decree of pedigree of General Kosciusko and his next of kin, exhibited to me, and marked A, was given by [the] proper forum, and in form prescribed by the laws of Lithuania; and it should be received as evidence of the pedigree of General Kosciusko, and of his next of kin, in all the courts of the empire of Russia. I know the handwriting of Mr. Postowski, the marshal of the nobility of Grodno; I saw him writing frequently; he usually holds the pen very high, *what* accounts for [the] peculiar form of his signature, which I believe and consider his own signature. I know also the handwriting of Mr. R. Montowicz, the deputy of the nobility; I saw him write frequently, and I had in my possession some letters written in his handwriting. The signatures of Messrs. Potowski and Montowicz, which I see on the decree of pedigree now before me, are their own signatures. I know also the seal of the assembly of the nobility affixed to the decree; I saw it frequently; I believe it to be genuine. The other seal, of the president of the treasury department of the government of Grodno, I believe also to be genuine.

5th. Please to examine the other exhibit, marked B, purporting to be a certificate [of] a decree of the court of Kobryn, in Lithuania, and state whether this decree was given by proper forum as to the matter which it decides; and if you know any of the signatures, or any of the seals affixed thereto, please to state it.

Says: The certificate of the decree of the court of Kobryn, marked B, was given by proper forum, and in proper form, as prescribed by the laws of Lithuania. I do not know any of the signatures of this decree, but I know the seal of the court of Kobryn, and believe it to be genuine. I am also well acquainted with the seal of the State affixed to the authentication or legalization by the ministry of foreign affairs; I believe it to be genuine. This decree would be taken as evidence in all courts in Lithuania.

HENRY KALUSSOWSKIE.

Washington, Oct. 22, 1847.

Deposition of Stephen J. Dallas.

Stephen J. Dallas, the second witness of the complainants, after being duly sworn, and according to law, was examined as follows:

1st. Your name, age, place of birth, &c.

Says: My name is Stephen J. Dallas; am 39 years of age; native of Lithuania, in the government of Wilna. I came to this country in the year 1834. I am [a] citizen of the United States, and am engaged as a clerk in the Post Office Department in the city of Washington, where I reside.

2d. Examine the two documents within, in the Russian language, and two translations of these documents, of which one is purporting to be a decree of pedigree of General Thadeus Kosciusko, and of his next of kin, given by the assembly of the nobility of Grodno, on the 7th day of May, (1843,) and the other a decree of the court of Kobryn, in Lithuania, and state whether the two translations of said *said* two decrees have been made and written by you; if so, state whether they are true and correct translations.

Says: The said two translations have been made by me, and written by my hand, and they are true translations, and correct.

3d. Did the counsel of the next of kin of General Thadeus Kosciusko give you any other document written in the Russian language for the purpose of translating it? If so, state what document it was, and how it was authenticated.

Says: The counsel of the heirs of Kosciusko gave me, some time in December, 1846, another exemplification of the decree of pedigree which is now before me, and marked A, and I made the translation of said decree from that other exemplification; and the same translation I have compared with the exemplification before me, marked A, but to that other exemplification was affixed a translation, made I do not recollect by whom; but that exemplification of the decree written in the Russian language was authenticated by the foreign ministry at St.

Petersburgh, and by the American minister then residing at St. Petersburgh, Mr. C. S. Todd, in the form as it is on the decree of the court of Kobryn, heretofore alluded to, and marked B.

STEPHEN J. DALLAS.

And a citation be issued against Colonel Bomford to appear on the 29th October, 1847.

NATH'L POPE CAUSIN.

October 22, 1847.

Further proceedings upon the foregoing against said Colonel George Bomford, administrator de bonis non of Kosciusko's estate, abated in consequence of his death, and the letters of administration de bonis non on the estate of T. Kosciusko was granted to Lewis Johnson on the 31st day of May, 1848.

ED. N. ROACH, *Reg'r wills.*

Exhibit D, referred to in the foregoing depositions.

To the honorable the justice of the orphan's court for the District of Columbia.

The petition of the undersigned, counsel of the Estko's branch of the heirs of the late Thadeus Koscieskos, and of some of the said heirs of Zolkoseski branch, pray your honor that no final proceedings may be had in the matter of the administration upon the *the* estate of said deceased, without notice to the undersigned, counsel as aforesaid, unless the said court shall think proper to issue such letters to Benjamin Ogle Tayloe, or John F. Callan, of the city of Washington.

REVERDY JOHNSON,
GASPARD TOCHMAN.

Washington, 31 March, 1848.

WASHINGTON, 12*th May*, '48.

MY DEAR SIR: I am so situated by engagements in the Senate tomorrow, that I shall not be able to be before you in the matter of the administration on the estate of General Kosciuskos. I am exceedingly solicitous to be present, if there is any question as to the right of Major Tochman and myself to act as counsel of the heirs, or as entitled in their behalf to recommend the adm'r.

But if we agree that the administration should be granted to a person or persons acceptable to Messrs. Fendall and Bradley, who represent some of the heirs, there may be no necessity, indeed can be none, for a discussion before you, of our respective rights as counsel of the heirs. I am told by my colleague, that Messrs. Fendall and Bradley, amongst other persons, recommend as fit persons to take the letters, Messrs. T. Carberry, L. Johnson, S. Murrey, and Mr. Smith, a deputy clerk of the circuit court.

To these, or either of them, we have no objection. To Mr. Bayard Smith and Mr. Ward, also named, we do object, because the first is the administrator on Col. Bomford's estate, and the other is a security on Bomford's administrator's bond. It is desirous that, as the funds are to be recovered from Bomford's estate, it would be improper to grant letters to persons directly interested in it. But to the first gentleman named, we have no objection. We name J. F. Callan, and submit that, if no valid objection can be made against him, that the administration be given to some of the parties first named, and to Callan jointly.

With regard, your obedient servant,

REVERDY JOHNSON.

Hon. Judge CAUSIN.

Ordered, that Messrs. Joseph H. Bradley and Philip R. Fendall be notified, that upon the application of Ladislaus Wankowize, grand nephew of General Kosciusko, and of the honorable Reverdy Johnson and of Major G. Tochman, acting as counsel of other heirs of Kosciusko, on Friday next, the 5th June, letters of administration of the estate of Gen. Kosciusko shall be issued to such a person or persons as will be proposed by the interested parties, and shall, in the opinion of the court, have a qualification prescribed by the law. Ordered, that the register be authorized to send a copy of this order to Messrs. Fendall and Bradley.

NATH'L POPE CAUSIN.

2d May, 1844.

Issue letters of adm'n de bonis non, with the wills, 1798, 1806, and 1816, annexed, to Mr. L. Johnson, in the penalty of 75,000 *thousand* dollars, on Thadeus Kosciusko's estate.

NATH'L POPE CAUSIN.

16th May, 1848.

Ordered, that the register take a bond for ten thousand dollars of Lewis Johnson, appointed administrator de bonis non, with the wills annexed, of 1798, 1806, and 1816, [of] Thadius Kosciuske, deceased, and so much of the above order be revoked as provided for the security of $75,000.

NATH'L POPE CAUSIN.

30 May, 1848.

Exhibit H, referred to in the foregoing depositions, as filed on behalf of the defendants, page 184.

I, Benjamin L. Lear, being of sound and disposing mind, memory, and understanding, do make and declare this to be my last will and testament: I give and bequeath to my dear mother, Mrs. Frances D. Lear, and to my dear wife Louisa, equally, all the furniture, plate, property, and effects in my dwelling-house, excepting such as may be

hereinafter disposed of. I give and devise to my mother, Mrs. Frances D. Lear, during her life, all the ground and its appurtenances held by John and James Williams, under lease, at the yearly rent of seventy-eight dollars and seventy-two cents, payable quarterly; and it is my will that the whole of the said rent be paid to her as it is collected, quarterly, during her life. I give and bequeath to my said mother my pew in St. John's church, and the debt due to me from that church, being originally two hundred dollars, at three per cent. annual interest. I give and devise to my said mother and her heirs, executors, and administrators, all the debt due to me from the estate of Captain Robert Hendley, and all my interest in the deed of trust from him to William D. Hendley and myself, given to secure that debt. The debt of this estate is seven hundred and sixty dollars, with interest from the first of January, 1819, and three hundred and thirty dollars lent him while at Charlestown, as charged in my account book B, with interest, together with the taxes paid on his lots (other than that occupied by me, on which is the dwelling-house) ever since the year 1817. As I occupied the house on lot No. 15, square No. 75, I claim nothing for the taxes, insurance, and repairs I have paid on that.

I give to my mother the watch that was my honored father's, with his seal and the watch he gave to me; and I request that she will, if she has no objection, give them at her death to some of my cousin George W. Storer's children. I give and devise to my cousin, Miss Mary Lear Storer, during her life, all my property, real and personal, in Portsmouth; and at her death, to Lincoln Lear Storer, (the son of my cousin George W. Storer,) and his heirs, executors, and administrators. I also give and bequeath to my said cousin Mary all the articles of furniture and plate in my possession, which belonged to my grandmother, excepting such as my mother may wish to retain.

I give and devise to the aforesaid Lincoln Lear Storer the two lots of ground owned by me in square No. 70 in the city of Washington, to him and his heirs.

And I also give him my miscellaneous library after the decease of my dear mother. My law library to be sold.

I give to my cousin George Washington Storer my gold watch, with the chain and seal, to be worn by him, and given to his son, Lincoln Lear Storer, when he is old enough to wear it and know its value. I give and devise to Mrs. Lucy Chamberlain the use and occupation, during her life, of that part of the dwelling-house in Portsmouth which she now occupies; and I give her sufficient money from my estate to purchase her food, fuel, clothing, furniture, and whatever else may be necessary to furnish her a proper and liberal support during life, which is to be paid to her by my executors, from time to time, at least quarterly. This is what I have always promised her, as some compensation for her kind and faithful services to my grandmother and all the family.

I give, devise, and bequeath to my dear wife, during her life, all the rest and residue of my property, real, personal, and mixed, and all the

rents, issues, and profits thereof, and all debts owing to me of every kind, excepting what is herein before disposed of.

I make, constitute, and appoint Colonel George Bomford, Captain John D. Hendley, William D. Hendley, and my cousin, George Washington Storer, executors of this my will; and I give them power and authority to sell and convey, from time to time, with the consent of my wife, any part of my property given to her, which they may deem necessary, prudent, or proper, upon consultation among the whole of them, and to invest the proceeds of such sales in some fund which they shall all deem sufficiently profitable, and at the same time perfectly safe.

But it is my will and desire, that my houses in square No. 169, opposite the War office, and my house in square No. 225, on the Pennsylvania avenue, may be reserved from sale so long as they shall be likely to yield good rents, because I consider them the most valuable part of my property, and likely to increase rather than diminish in value, unless the canal debt or some other occurrence depress this city in an extraordinary degree. But if my wife's income should fall short of one thousand dollars a year, I give power and authority to my executors to sell, from time to time, if she should request it, such of my property as they may deem most expedient to supply the deficiency. It being my desire to give her an income of one thousand dollars a year so long as my property will suffice, principal and interest, to do this, unless she prefers the certainty of a smaller income, without diminishing the principal. It is my will and intention, that whatever may remain of the property given to my wife, or the proceeds of it, at the time of her death, shall go to my right heirs, as also the lot held by John and James Williams, after the death of my mother, the rent of which is given to her during her life.

Witness my hand and seal at the city of Washington, the twenty-seventh day of June, in the year eighteen hundred and thirty-two.

B. L. LEAR. [SEAL.]

Signed, sealed, published, and declared by Benjamin L. Lear, as his last will and testament, in the presence of us, who subscribe the same as witnesses at his request in his presence, and in the presence of each other.

WM. BRENT,
JNO. A. SMITH,
W. REDIN.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Orphan's court, November 9th, 1832.

Be it remembered, that on this day appeared in court William Brent and John A. Smith, two of the subscribing witnesses to the within and foregoing last will and testament of Benjamin L. Lear, late of Wash-

ington county aforesaid, deceased, and severally made oaths on the holy evangels of Almighty God that they did see the testator, therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that, at the time of his so doing, he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding; and that they, together with William Redin, the other subscribing witness, respectively subscribed their names as witnesses to this will at the request of the testator, and in the presence of each other.

Test: HENRY C. NEAL,
Reg. wills.

And now, on this 15th day of November, 1832, in the orphan's court of the county and district aforesaid, appears William Redin, the other subscribing witness to this will, and made oath on the holy evangels of Almighty God that he did see the testator, therein named, sign and seal the same; that he published, pronounced, and declared the same to be his last will and testament; that, at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding; and that he, together with William Brent and John A. Smith, the other subscribing witnesses, respectively subscribed their names as witnesses to this will in the presence and at the request of the testator, and in the presence of each other.

Test: HENRY C. NEALE,
Reg. wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 6th day of August, in the year, 1850.

[SEAL.] ED. N. ROACH, *Reg. wills.*

Exhibit J, referred to in the aforegoing depositions, page 184, *filed by defendants.*

GEORGE BOMFORD
to
BENJAMIN L. LEAR.

Deed of trust, recorded 3d February, 1831.

This indenture, made this twelfth day of August, in the year of our Lord one thousand eight hundred and thirty, between George Bomford of the one part, and Benjamin L. Lear of the other part: Whereas the said Benjamin L. Lear hath agreed to lend to the said George Bomford the sum of seven thousand dollars, in such sums as he shall, from time to time, receive from sales of certain stocks as fast as he can make such

sales reasonably and on good terms; and the said George Bomford hath agreed to execute and deliver this instrument, for the purpose of securing the payment of such sum or sums, with interest thereon, payable quarterly, from the time each respective sum shall be lent. Now, therefore, this indenture witnesseth, that the said George Bomford, for and in consideration of the premises, and further the sum of one dollar in hand paid him by the said Benjamin L. Lear, at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) hath given, granted, bargained, sold, enfeoffed, conveyed, released, surrendered, and confirmed, and by these presents doth give, grant, bargain, sell, enfeoff, convey, release, surrender, and confirm, unto the said Benjamin L. Lear, his heirs and assigns, forever, the following parcel of property lying in the city of Washington, in the district of Columbia, and being lots numbered five and six, in square number one hundred and eighty-five, and lots numbers nine and ten, and parts of numbers eight and eleven, in square number two hundred and fifty-four, as the said lots and squares are designated on the public plat of the said city: Beginning for the said part of lot number eight, at the southwest corner thereof, and running east twenty-five feet; thence north one hundred feet to the said lot number ten; thence west twenty-five feet; and thence south one hundred feet; and beginning for said part of lot number eleven, at the southwest corner thereof, and running east to a thirty feet public alley; thence north twenty-four feet nine inches; thence west to Fourteenth street west; and thence to the beginning; together with the buildings, improvements, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining; and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, interest, and estate of him, the said George Bomford, in and to the same, and every part and parcel thereof forever, subject to the intent and purposes hereinafter mentioned. To have and to hold the said lots, pieces, and parcels of ground, buildings, and premises, with the appurtenances, unto him, the said Benjamin L. Lear, and his heirs and assigns, forever. In trust, nevertheless, that if the said George Bomford, or his heirs or assigns, shall fail to pay the said sum of seven thousand dollars (or such part thereof as may be lent to him by the said Benjamin L. Lear, from time to time) within two years from the time such sum or sums shall respectively be lent, with interest quarterly, then, and in such case, the said Benjamin L. Lear, or his heirs or assigns, shall, and may, enter upon, and take possession of, the aforesaid lots of ground, buildings, and premises, and the same may sell at public or private sale, and on such terms as he may deem most beneficial for all the persons concerned in the sale, and may convey the same to the purchaser by a good and sufficient deed, and apply the proceeds of said sale, after paying the expenses thereof, to pay the amount due to him by the said George Bomford, or his heirs or assigns. But if the said George Bomford, or his heirs or assigns, shall well and truly pay and satisfy to the said Benjamin L. Lear, or his executors, administrators, or assigns, what-

ever sum or sums of money has been, or may be, lent as aforesaid, within two years from the dates of these presents, with interest quarterly, and all proper costs, charges, and expenses on account thereof, then this conveyance shall be void and of none effect, and the lands and premises herein described be free, discharged, and released of all lien, claim, or demand by reason hereof; and the said George Bomford covenants, promises, and agrees, for himself, his heirs, executors, and assigns, to and with the said Benjamin L. Lear, and his heirs, executors, and assigns, that he, the said George Bomford, and his heirs and assigns, shall and will do no manner of act, directly or indirectly, to hinder, molest, retard, or in any wise impair or delay the said Benjamin L. Lear, or his heirs, executors, or assigns, in the due execution of this trust; and that on breach of payment of the sum or sums of money so as aforesaid lent, or to be lent, or of any part thereof, within two years, with interest as aforesaid, he, the said Benjamin L. Lear, his heirs, executors, or assigns, shall and may peaceably enter upon, have, hold, and possess the premises herein before conveyed and described; and upon the sale thereof, according to the terms of this trust, peaceably and quietly transfer, convey, release, and surrender the same, and every part thereof, to the purchaser or purchasers, and good and sufficient deeds of bargain, sale, enfeoffment, release, and confirmation to make, execute, acknowledge, and deliver, free of all interference, impediment, claim, pretence, or demand, whatsoever, in law or equity of law, of the said George Bomford, and his heirs and assigns, forever.

In testimony whereof the said George *Gideon* hath hereunto set his hand, and affixed his seal, the day and year first herein before written.

GEO. BOMFORD. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM WATERS, *J. peace.*
R. S. BRISCOE, *J. peace.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

Be it remembered, that on this twelfth day of August, in the year one thousand eight hundred and thirty, before the undersigned, two of the justices *of the justices* of the peace of the county of Washington aforesaid, being within the said county, personally appeared George Bomford, the party grantor within named, who acknowledges the within and foregoing instrument of writing to be his act and deed, and the lots of ground, buildings, and premises, with the appurtenances therein mentioned, to be the right and estate of the therein named grantee, Benjamin L. Lear, his heirs and assigns, forever.

Taken before and certified by

WILLIAM WATERS, *J. peace.*
R. S. BRISCOE, *J. peace.*

Received 12th August, 1830, from the within named Benjamin L.

Lear, four hundred and twelve dollars and fifty cents, on account of the within deed of trust, and as a part of the said sum of seven thousand dollars.

$412 50. GEO. BOMFORD.

Received, the twenty-first day of September, in the year eighteen hundred and thirty, on account of the within deed of trust, six thousand five hundred and eighty-seven dollars and fifty cents, from the within named Benjamin L. Lear, it being the balance of the within mentioned sum of seven thousand dollars.

$6,587 50. GEO. BOMFORD.

True copy.
Test: JNO. A. SMITH, *Clk.*

Exhibit K, referred to in the foregoing deposition, page 184, *filed by defendants.*

UNITED STATES OF AMERICA,
Washington county, District of Columbia, to wit:

To all whom these presents shall come, greeting:

Know ye, that on the 26th day February, in the year of our Lord 1834, letters testamentary of all and singular the goods, chattels, and credits which were of Benjamin L. Lear, late of Washington county, deceased, was, by the orphan's court of Washington county aforesaid, granted and committed unto George Bomford, of the county and District aforesaid, he having just entered into bond, with approved securities, for the faithful performance of the duties.

Witness William F. Purcell, esq., judge of the orphan's court of Washington county, District of Columbia, this 6th day of August, anno domini 1850.

[SEAL.]

Test: ED. N. ROACH,
Register of wills.

No. 1.

No. 1, *referred to in the foregoing deposition.*

The first account of George Bomford, administrator de bonis non, with the will annexed, of Thadeus Kosciusko, deceased.

This accountant charges himself with the balance due by the former administrator of Kosciusko, as settled with the orphan's court - - - -	$31,785 27½
And with the following sums of money, to wit:	
To Thomas J. Belt, on mortgage - - -	500 00
Thos. Swann, same - - - -	2,550 00
A. C. Wood, same - - - -	1,700 00

And with the following sums of money, received on account of dividends and interest:

From George Bomford, interest - - -		2,730 00
Thos. Swann, same - - - -		203 00
Bank of Washington, dividend - - -		199 20
Same, same - - -		182 40
Same, same - - -		182 40
Bank of Metropolis, same - - .		76 50
Same, same - - -		89 25
Same, same - - -		76 50
John A. Smith, principal and interest - -		2,876 60
R. R. Gurley, same - - - -		55 40
Thos. J. Belt, interest - - - -		77 38
Bank of Washington, dividend - - -		265 40
A. C. Wood, interest - - - -		382 50
Jacob Swimley, same - - - -		180 17
Thomas Swann, same - - - -		600 00
W. Williamson, interest - - -		491 70
Same, same - - -		730 34
Same, part of principal -		166 67
rent of Swimley's house - - -		1,250 00
		$47,350 68½

And he prays a credit for the following payments, to wit:

Paid Wm. Brent fees, per voucher	No. 1 - -		$21 93
H. C. Neale,	same, No. 2 - -		7 91
Same,	same, No. 3 - -		33 23
Jas. Jourdan,	same, No. 4 - -		3 00
Ed. N. Roach,	same, No. 5 - -		10 00
J. D. Dandridge,	same, No. 6 - -		175 00
J. B. Smith,	same, No. 7 - -		33 21
Wm. Wirt,	same, No. 8 - -		500 00
Wm. Brent,	same, No. 9 - -		5 10
Geo. Hercus,	same, No. 10 - -		16 00
Daniel Hauptman,	same, No. 11 - -		3 75
James Carrico,	same, No. 12 - -		124 99
Same,	same, No. 13 - -		3 16
insurance, 1833,	same, No. 14 - -		7 75
Chas. Alexander,	same, No. 15 - -		38 90
Thos. Payne,	same, No. 16 - -		9 99
And also claims a credit for the following money loaned, &c.:			
To Thos. Swann, on mortgage - - -			2,500 00
Thos. C. Belt, same - - -			500 00
A. C. Wood, same - - -			1,700 00
And a commission of 10 per ct. on $8,265 41, is -			826 54

Allowed this account for an error in over charge, Bank Washington dividend of Nov., 1838; it should have been $225; deduct - - - - -	40	00
	6,560	46
Balance due by administrator - - -	40,790	22½
	$47,350	68½

DISTRICT OF COLUMBIA,
Washington county, to wit:

ORPHAN'S COURT, *March 15th*, 1839.

This day appeared George Bomford, administrator aforesaid, and made oath on the holy evangels of Almighty God that the foregoing account as stated is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH, *Register*.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of June, [SEAL.] in the year 1850.

ED. N. ROACH, *Reg'r Wills*.

No. 2.

No. 2, referred to in the foregoing deposition.

The second account of George Bomford, administrator de bonis non, with the will annexed, of Thadeus Kosciusko, deceased.

This accountant charges himself with the balance due on last account - - - - -	$40,792	22½
And with the following sums of money since received, to wit:		
From Geo. Bomford, interest on note - - -	550	00
Thos. Swann, same - - -	187	50
Wm. Williamson, same - - -	168	75
A. C. Wood same - - -	127	50
interest on the cash in hand, being the balance due on last account to 1st of April, 1840 -	1,089	89
Bank of Washington dividend - - -	167	40

From Bank of Washington, dividend - - -		167 40
Same, cash transferred, &c. -		182 40
		$43,431 06½

And he prays a credit for the following payments, to wit:

Paid Richard S. Cox, per voucher No. 1 - -		500 00
Thos. Payne, same, No. 2 - -		30 00
King & Pickerell, same, No. 3 - -		19 01½
Same, same, No. 4 - -		12 87½
And a commission of 10 per cent. on moneys col[lected] since last [account,] say $2,640 84, is - -		264 08
Also a commission of 10 per cent. on the balance due of $4,426 94½, collected from the estate of the late administrator, Benj. L. Lear, deceased - - -		442 69
		1,268 66
Balance due by administrator, &c. - -		42,162 40½
		$43,431 06½

DISTRICT OF COLUMBIA,
Washington county, to wit:

ORPHAN'S COURT, *April* 13, 1841.

This day George Bomford, administrator aforesaid, [appeared] and made oath on the holy evangels of Almighty God, that the aforegoing account as stated is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH, *Reg. wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of June, in the year 1850.

ED. N. ROACH, *Reg. wills.*

No. 3, *referred to in the foregoing deposition. No.* 3.

The third account of George Bomford, administrator de bonis non, with the will annexed, of Thadeus Kosciuzko, deceased.

This accountant charges himself with the balance due on last account - - - - - -	$42,162 40½

And with the following money collected since the last account viz:	
From George Bomford, interest on his note -	$420 00
From Thos. Swann, same - - - -	150 00
From Wm. Williamson's ex'y, same - - -	322 00
From A. C. Wood, same, - - - -	102 00
From Bank of Washington, dividend - - -	167 40
From Same same - -	167 40
From rent of Swimley's house, (so called) - -	360 00
And with this sum loaned to Ed. N. Roach, on note -	500 00
And with interest on same - - - -	15 00
Also with interest on $15,904 06 in hand of said administrator from 1 April, 1840, to 1 April, 1841 -	954 24
	$45,320 44½
And he prays a credit for the following payments, to wit:	
Paid Washg. Corpor. taxes, per voucher No. 1, -	54 23
Paid same same No. 2, -	129 27
Paid same same No. 3, -	46 50
Paid same same No. 4, -	23 25
Paid Firemen's Ins. Compy., same No. 5, -	28 00
Paid Frank. Ins. Compy., same No. 6, -	20 25
And allowed this accountant a credit for 46 shares of Bank of Columbia, appraised at $100 per share, since which the bank having failed therefor, the stock being of no value, per certificate No. 7, - -	4,600 00
And a com'n of 10 per ct. on $2,658 04 is - -	265 80
Also with this sum loaned to Ed. N. Roach on note -	500 00
	5,667 30
Balance due by administrator - - - -	39,653 14½
	$45,320 44½

DISTRICT OF COLUMBIA,
Washington county, to wit:

APRIL 27*th*, 1841.

This day appeared George Bomford, administrator as aforesaid, and made oath on the holy evangels of Almighty God that the aforegoing account as stated is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed. Sworn before

ED. N. ROACH, *Reg. wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original filed

and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seals of office, this 24th day of June, in the year 1850.

ED. N. ROACH, *Reg. wills.*

No. 4.

No. 4, referred to in the aforegoing depositions.

The fourth account of George Bomford, administrator de bonis non, with the will annexed, of Thadius Kosciusko, deceased.

This accountant charges himself with the balance due on last account - - - - -	$39,653 14½
And with the following money collected since the last account, viz:	
From George Bomford, interest on his note - -	420 00
From Thos. Swann, same - -	177 75
From same, same - -	300 00
From Wm. Williamson, part of principal and interest,	833 21
From Bank of Washington, dividend - -	195 30
From Mrs. Wood, interest on note - - -	102 00
From Mrs. Franklin, (Swimley's house,) $1,560, interest $36 60 - - - - -	1,596 60
From Ed. N. Roach, interest on note - - -	30 00
Also with interest on $18,012 14½, in hands of said administrator, from the 1st of April, 1841, to 1st of April, 1842 - - - - - -	1,080 72
	$44,388 72½

And he prays a credit for the following, to wit:	
Paid Ed. N. Roach, per voucher No. 1 - -	12 37½
And a com'n of 10 per cent. on $4,735 57, is -	473 55
Also fees to register [of] wills, per vouchers No. 2 -	6 00
	491 92½
Amount brought over - -	491 92½
Balance due and accountable - - - -	43,896 80
	$44,388 72½

Orphan's court, June 21, 1842.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator aforesaid, and made oath on the holy evangels [that the] account, as stated, is just

and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH,
Reg. Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills for Washington county aforesaid.

[SEAL.] Witness my hand and seal of office, this 24th day of June, in the year 1850. ED. N. ROACH,
Reg. Wills.

No. 5.

No. 5, referred to in the aforegoing depositions, page .

The fifth account of George Bomford, administrator de bonis non, with the will annexed, of Thadius Kosciuzko, deceased.

This accountant charges himself with the balance due on last account - - - - -	$43,896 80
And with the following money collected since last account, to wit:	
From Geo. Bomford, interest on his note - -	420 00
From Bank of Washington, dividend - -	167 40
From M. Franklin - - - - -	381 80
From Thos. Swan's estate - - - -	750 00
From same " - - - -	1,733 16
From W. Williamson " - - - -	79 68
From Ed. N. Roach, interest on note - - -	30 00
From Mrs. Wood, same - - -	102 00
Also with interest on $24,515 79, in hands of said administrator, from the 1st of April, 1842, to 1st of April, 1843 - - - - - -	1,470 94
	$49,031 78

And he prays a credit for the following payments, to wit:	
To com'n of 10 per cent. on $5,134 98 of collections since last account, is - - - -	513 49
And fees to register [of] wills - - - -	6 37
	519 86
Balance due by adm'r - - - -	48,511 02
	$49,031 78

Orphan's court, April 11, 1843.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator aforesaid, and made oath on the holy evangels of Almighty God, that the aforegoing account, as stated, is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH,
Reg'r Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original folio, and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office, the 24th day of June, in the yar 1850. ED. N. ROACH,
Reg'r of Wills.

No. 6.—No. 6.

The sixth account of George Bomford, administrator de bonis non, with the will annexed, of Thadius Kosciuzko, deceased.

This accountant charges himself with the balance due on last account - - - - -	$48,511 92
And with the following collections made since last account, to wit:	
From Geo. Bomford, interest on note - - -	630 00
From W. Williamson, same - - -	119 52
From E. N. Roach, same - - -	45 00
From Mrs. Wood, same - - -	153 00
From Mr. Franklin, same - - -	1,653 26
From Bank of Washington, 3 dividends - -	502 20
And with interest on balance in administrator's hands, say $32,404 07, from 1st of April, 1843, to 1st of April, 1844 - - - - - -	2,916 36
	$54,531 26
And he prays a credit for the following, to wit:	
Account of 10 per cent. on $6,019 34 is - -	601 93
Also fees to register [of] wills, per voucher No. 1 -	5 50
	607 43
Balance due and accountable - - - -	53,923 83
	$54,531 26

Orphan's court, October 11th, 1844.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator aforesaid, and made oath on the holy evangels of Almighty God that the aforegoing account, as stated, is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH,
Reg'r Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original folio, and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seals of office, this 24th day of June, in the year 1850.

ED. N. ROACH,
Reg'r Wills.

No. 7.

No. 7 referred to in the aforegoing deposition.

The seventh account of George Bomford, administrator de bonis non, with the will annexed, of Thaddeus Kosciusko, deceased.

This accountant charges himself with the balance charged from his 6th account as settled and filed in this court, to wit -	$53,923 83
And with the following sums received since:	
From Col. Bomford, interest on his bond to 1 April, 1845 - - - - - -	420 00
From W. Williamson, debt and interest - -	82 02
From A. C. Wood, same - - - -	102 00
From E. N. Roach, same - - - -	30 00
From 2 dividends from Bank of Washington -	334 80
With interest on cash in hands of administrator, to wit, the sum of $23,625 47 to 1 April, 1845 -	1,417 56
	$56,310 21

And he claims credit for the following:		
Cash paid register's fees per voucher -	$5 75	
Commission of 10 per cent. on interest received since 6th account - -	238 63	
And he claims to be allowed by the court		

on account of errors and over charges in his 1, 2, 3, 4, 5, and 6 accounts as settled with court by his agent, R. Cutts, which errors will appear by the papers marked A, B, C, D, E, and F, herewith exhibited and prayed to be filed, and which errors amount to the sum of $14,151 36, being the difference between the 6th account as settled by R. Cutts, and the paper marked F, which shows the true balance due by the administrator on the 1 April, 1844 - - -	$14,151 36	
		$14,395 74
Balance due by administrator - - -		$41,914 47

Assets.

Bank of Washington stock - - -	$5,580 00
Bomford's bond - - - - -	7,000 00
A. C. Wood's bond - - - -	1,700 00
W. Williamson's bond - - - -	1,366 60
Roach bond - - - - -	500 00
And cash in hand of administrator - -	25,767 87
	$41,914 47

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator as aforesaid, and made oath on the holy evangels of Almighty God that the aforegoing account as stated is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit; which is, by the court, allowed and passed.

Sworn before ED. N. ROACH,
Reg. of Wills.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify, that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills for Washington county aforesaid.

Witness my hand and seal of office this 24th day of June, in the year 1850.

[SEAL.]

ED. N. ROACH, *Reg. of Wills.*

No. 8.

No. 8, *referred to in the aforegoing depositions.*

The eighth account of George Bomford, administrator de bonis non, with the will annexed, of Thaddeus Kosciusko, deceased.

This accountant charges himself with the balance on last account, $41,914 47

Also with the sum of seven thousand dollars, being in payment of the bond of George Bomford, of date the 12th August, 1830, in favor of Lear, administrator of Kosciusko, (this bond being paid by the of the sale of the property in square No. 254, sold to C. H. James, Dr. Tho. Miller, and Fielder Burch,) property then was a deed of trust to B. L. Lear to secure the said debt - - - - - 7,000 00

$48,914 47

And this accountant claims a credit for his said bond for $7,000, as for said bond paid, surrendered, and on file in this court - - - - $7,000 00

Balance due by administrator - - $41,914 47

DISTRICT OF COLUMBIA,
Washington county, to wit:

Orphan's court, November 14, 1845.

This day appeared George Bomford, administrator as aforesaid, and made oath on the holy evangels of Almighty God that the aforegoing account as stated is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit; which is by the court allowed and passed.

Test: ED. N. ROACH, *Reg. of Wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original, filed and recorded in the office of the register of wills, for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of June, in the year 1850.

[SEAL.]

ED. N. ROACH,
Register wills.

1990.

No. 9.

No. 9, referred to in the aforegoing depositions.

The ninth account of George Bomford, administrator de bonis non, with the will annexed, of Thadeus Kosciusko, deceased.

This accountant charges himself with the balance due on last account - - - - - - -	$41,914 47
And with the following sums collected since last account, to wit, from Ed. N. Roach's note - - -	500 00
From Mr. Williamson's, principal and interest - -	1,025 00
Prom Bank of Washington, dividend and interest on bal., due since 1st April, 1845, to 1st of Jan., 1847, after deducting the amount paid above and allowing 6 months to invest the interest charged in this last account having accrued to that date - - - -	3,562 74
	$47,002 21
And he prays a credit for the following payments, to wit:	
Paid Ed. N. Roach, per voucher No. 1 - -	8 25
Same, same, 2 - -	5 75
And from W. Williamson, part of principal - -	909 09
Also, Ed. N. Roach, in full - - - -	500 00
Also a com'n of 10 per cent. on $3,678 65, on interest since last account - - - - -	367 86
And a com'n of 7½ per cent. on $22,758 33, being am't of stocks, &c., received from former adm'r, deducting $4,600 Bank of Columbia stock, worth nothing, and $4,426 94 from Lear's estate; a com'n having heretofore been allowed, this com'n, through the neglect of the agent of Col. Bomford, not having been credited to him in his former accounts, is now allowed -	1,706 86
	3,497 81
Balance due and accountable - - - -	43,504 40
	$47,002 21

Orphan's court, June 7, 1847.

DISTRICT OF COLUMBIA,
Washington county, to wit:

This day appeared George Bomford, administrator aforesaid, and made oath on the holy evangels of Almighty God that the aforegoing account as stated, is just and true; that he has bona fide paid, or secured to be paid, the several sums for which he claims a credit, which is by the court allowed and passed.

Test: ED. N. ROACH, *Reg. wills.*

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills, for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of June, in the year 1850.

[SEAL.] ED. N. ROACH, *Reg. wills.*

Will of 1817.

Je, soussigné, Général Thadée Kosciuszko, dispose par ce présent testament des mes biens après ma mort, ainsi que suit :

1. Je légue des mes fonds, dont j'ai à disposer en Angleterre auprès de Monsieur Thomson, Bonards et C'ie, la moitié à Monsieur le Général Baszkoyski; l'autre moitie, qui se montera à environ cinquante mille francs de France, je légue à Mademoiselle Emilie Zeltner, fille de Monsieur Zaviez Zeltner, ci-devant préfét de ce Canton, sous la condition, qu'exceptés les intérêts, ni elle, ni ses parens, juissent disposer du capital avant son marriage.

2. Je légue tous mes effets, ma voiture, et mon cheval y comprise, à Madame et à Monsieur Zaviez Zeltner, le nommé ci-dessus.

3. Je légue de mes fonds, dont j'ai à disposer auprès de Monsieur Kaspar Escher, à Zurick, la somme de trois mille francs de France à Madame Zeltner, épouse de Mr. Edouard Zeltner, ci-devant negociant de cette ville, et à ses enfants. Je légue du reste de ces fonds, qui se montera encore à environ trois mille francs de France, deux mille francs ou d'avantage, s'il y'auroit d'avantage pour être distribués aux pauvres, et mille francs pour les fraix de mon enterrement, sous la condition que je sois porté par les pauvres.

4. Je légue des mes fonds de cinq mille francs de France, dont j'ai à disposer chez Monsieur Bettin, negociant de cette ville, deux milles francs de France à Monsieur Zaviez Amieth, notaire de cette ville, que je nomme pour exécuteur de mon testament. Je légue de ces fonds deux mille francs de France à Mademoiselle Wagnery, fille du commandant de Morgues. Je légue cinq cent francs de France à mon medicin Monsieur Schürer; deux cent francs de France de gratification à mon doméstique, et le réste de ces fonds à Mademoiselle Ursule Zeltner, fille de Monsieur le Préfét Zeltner, nommée ci-dessus.

5. Je légue ma cassette et tout ce quelle contiène pour propriété à Mademoiselle Emilie Zeltner, nommée ci-dessus.

6. Je prie Monsieur le Notaire Zaviez Amiette de faire brûler après ma mort tous mes papiers, écrites dans la langue Polonaise.

Fait et passée à Soleure ce dezieme.

No. of certificate.	Date.	In whose favor.	Species of stock.	Commencement of interest.	Amount of certificate.	Amount transferred.	To whom transferred.	By whom transferred.	When transferred.
90	3d Feb., 1817.	Thadeus Kosciusko	Loan of $10,000,000 of 1814.	October 1st, 1824.	$11,363 63	$1,000 00	John Andrews, assis. cash B'k U. S.	B. L. Lear, adm'r.	17th Nov., 1824.
						10,363 63	Benj. L. Lear, administrator.	"	"
37	"	"	$10,000,000, 1814	"	1,136 36	1,136 36	Jno. Andrews, asst. cash. Bank U. S.	"	"
158	17th Nov., 1824.	B. L. Lear	$10,000,000, 1814	Inter. ceased July 1, 1829.	10,363 63	10,363 63	The United States	"	2d July, 1829.

TREASURY DEPARTMENT,
Register's office, February 14, 1851.

I certify the above to be a true extract from the record of the transfer of certificates of the loan of 1814, and that the above mentioned certificate No. 158 for $10,363 63, having become redeemable on the 1st July, 1829, was on the 2d of that month transferred or assigned over to the United States by Benjamin L. Lear as administrator, and the amount thereof paid to him in specie.

TOWNSEND HAINES, *Register*.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I certify that the aforegoing is a true copy from the original filed and recorded in the office of the register of wills, for Washington county aforesaid.

Witness my hand and seal of office, this 24th day of June, in the year 1850.

[SEAL.] ED. N. ROACH, *Reg. wills.*

Will of 1817.

Je, soussigné, Général Thadée Kosciuszko, dispose par ce présent testament des mes biens après ma mort, ainsi que suit :

1. Je légue des mes fonds, dont j'ai à disposer en Angleterre auprès de Monsieur Thomson, Bonards et C'ie, la moitié à Monsieur le Général Baszkoyski; l'autre moitie, qui se montera à environ cinquante mille francs de France, je légue à Mademoiselle Emilie Zeltner, fille de Monsieur Zaviez Zeltner, ci-devant préfét de ce Canton, sous la condition, qu'exceptés les intérêts, ni elle, ni ses parens, juissent disposer du capital avant son marriage.

2. Je légue tous mes effets, ma voiture, et mon cheval y comprise, à Madame et à Monsieur Zaviez Zeltner, le nommé ci-dessus.

3. Je légue de mes fonds, dont j'ai à disposer auprès de Monsieur Kaspar Escher, à Zurick, la somme de trois mille francs de France à Madame Zeltner, épouse de Mr. Edouard Zeltner, ci-devant negociant de cette ville, et à ses enfants. Je légue du reste de ces fonds, qui se montera encore à environ trois mille francs de France, deux mille francs ou d'avantage, s'il y'auroit d'avantage pour être distribués aux pauvres, et mille francs pour les fraix de mon enterrement, sous la condition que je sois porté par les pauvres.

4. Je légue des mes fonds de cinq mille francs de France, dont j'ai à disposer chez Monsieur Bettin, negociant de cette ville, deux milles francs de France à Monsieur Zaviez Amieth, notaire de cette ville, que je nomme pour exécuteur de mon testament. Je légue de ces fonds deux mille francs de France à Mademoiselle Wagnery, fille du commandant de Morgues. Je légue cinq cent francs de France à mon medicin Monsieur Schürer; deux cent francs de France de gratification à mon doméstique, et le réste de ces fonds à Mademoiselle Ursule Zeltner, fille de Monsieur le Préfét Zeltner, nommée ci-dessus.

5. Je légue ma cassette et tout ce quelle contiène pour propriété à Mademoiselle Emilie Zeltner, nommée ci-dessus.

6. Je prie Monsieur le Notaire Zaviez Amiette de faire brûler après ma mort tous mes papiers, écrites dans la langue Polonaise.

Fait et passée à Soleure ce dezieme.

No. of certificate.	Date.	In whose favor.	Species of stock.	Commencement of interest.	Amount of certificate.	Amount transferred.	To whom transferred.	By whom transferred.	When transferred.
90	3d Feb., 1817.	Thadeus Kosciusko	Loan of $10,000,000 of 1814.	October 1st, 1824.	$11,363 63	$1,000 00	John Andrews, assis. cash B'k U. S.	B. L. Lear, adm'r.	17th Nov., 1824.
						10,363 63	Benj. L. Lear, administrator.	"	"
37	"	"	$10,000,000, 1814	"	1,136 36	1,136 36	Jno. Andrews, asst. cash. Bank U. S.	"	"
158	17th Nov., 1824.	B. L. Lear	$10,000,000, 1814	Inter. ceased July 1, 1829.	10,363 63	10,363 63	The United States	"	2d July, 1829.

TREASURY DEPARTMENT,
Register's office, February 14, 1851.

I certify the above to be a true extract from the record of the transfer of certificates of the loan of 1814, and that the above mentioned certificate No. 158 for $10,363 63, having become redeemable on the 1st July, 1829, was on the 2d of that month transferred or assigned over to the United States by Benjamin L. Lear as administrator, and the amount thereof paid to him in specie.

TOWNSEND HAINES, *Register*.

October rules, 1850. *Cause set for hearing by complainants.*

Whereupon the said cause was regularly continued at rules, until the first Monday of October, eighteen hundred and fifty, when the said cause was set for hearing by the complainants; and the said defendants, by their solicitors aforesaid, file in court here the following objections to the reading of the depositions by the complainants, to wit:

Objections of defendants to depositions, &c.

JOHN F. ENNIS, adm'r de bonis non of Jos. Zolkowski & als.
vs.
J. B. H. SMITH, adm'r of Bomford, James Carrico & als.

The defendants object to the reading of the depositions of the witnesses examined under the commission issued in the above cause, at the instance of the complainants, to Messrs. Brent, Swann, and Callan, in August last, and all the documents and depositions annexed to the said depositions, referred to therein, and returned therewith by the said commissioners, on the ground that the said depositions and documents are not admissible, competent, and proper evidence in the above cause, and should not be received as evidence against the said defendants, or either of them.

JNO. MARBURY,
W. REDIN,
RICH'D S. COXE,
Solicitors for defts.

Defendants' objection to Code Napoleon.

The complainants produced at the hearing and offered to read, as evidence in the cause, a printed book containing the code Napoleon, procured from the Congress Library, and purporting on its title page to be "Code Civil Bulletin des lois, No. 109 bis. A Paris: De l'Imprimerie royal. 1825," without more. To the reading of which, as competent and admissible evidence in this cause, the defendants objected.

W. REDIN,
JNO. MARBURY,
For defendants.

Whereupon the said cause was regularly continued at rules, until October term, eighteen hundred and fifty-one, when G. Tochman, esquire, solicitor for the complainants, filed in the said cause the following paper, to wit:

Admission by complainants' solicitor that there are no assets in the hands of J. B. H. Smith, &c., and motion by him to dismiss his bill.

JOHN F. ENNIS, adm'r de bonis non of Jos. Zolkowski & als.,
vs.
J. B. H. SMITH, adm'r of George Bomford & als.

The counsel of the complainants, in the above cause, admit that there are no assets of the estate of George Bomford, nor of the estate of Gen'l Kosciusko, in the hands of Jonathan B. H. Smith, administrator of the estate of George Bomford, as is averred by said Smith in his answer being on file. Whereupon, it is moved that the bill be finally disposed.

G. TOCHMAN,
Solicitor of the complainants.

17th Nov., 1851.

Whereupon all and singular the premises being by the court here seen and understood, and the said parties, by their solicitors, being heard, and after mature deliberation being thereupon had, the said court made the following decree in the premises, to wit:

Decree dismissing bill.

J. F. ENNIS, adm'r de bonis non, and others,
vs.
J. B. H. SMITH, adm'r of George Bomford & als.

This cause having been set for final hearing upon the bill, amended bill, answers, exhibits, general replication, depositions of witnesses, agreements and admissions of counsel, and the same having been argued by counsel, and heard and considered by the court, it is, this 19th day of November, 1851, ordered, adjudged, and decreed by the court, that the bill and amended bill of the complainants be, and the same are hereby, dismissed, each party paying his own costs.

By order of the court. Test:

JNO. A. SMITH, *Clerk.*

Appeal prayed to Supreme Court, U. S.

And thereupon the said complainants, by their solicitors aforesaid, pray an appeal from the judgment and decree aforesaid, made by the said court in the premises, to the Supreme Court of the United States, and to them it is granted; whereupon they file in court here the following appeal bond, to wit:

Know all men by these presents, that we, John F. Ennis, Samuel S. Williams, Vladislaus Wancowiez, and John F. Callan, are held and firmly bound unto Jonathan B. H. Smith, administrator and trus-

October rules, 1850. *Cause set for hearing by complainants.*

Whereupon the said cause was regularly continued at rules, until the first Monday of October, eighteen hundred and fifty, when the said cause was set for hearing by the complainants; and the said defendants, by their solicitors aforesaid, file in court here the following objections to the reading of the depositions by the complainants, to wit:

Objections of defendants to depositions, &c.

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J. B. H. SMITH, adm'r of Bomford, James Carrico & als.

The defendants object to the reading of the depositions of the witnesses examined under the commission issued in the above cause, at the instance of the complainants, to Messrs. Brent, Swann, and Callan, in August last, and all the documents and depositions annexed to the said depositions, referred to therein, and returned therewith by the said commissioners, on the ground that the said depositions and documents are not admissible, competent, and proper evidence in the above cause, and should not be received as evidence against the said defendants, or either of them.

JNO. MARBURY,
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W. REDIN,
JNO. MARBURY,
For defendants.

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Admission by complainants' solicitor that there are no assets in the hands of J. B. H. Smith, &c., and motion by him to dismiss his bill.

JOHN F. ENNIS, adm'r de bonis non of Jos. Zolkowski & als.,
vs.
J. B. H. SMITH, adm'r of George Bomford & als.

The counsel of the complainants, in the above cause, admit that there are no assets of the estate of George Bomford, nor of the estate of Gen'l Kosciusko, in the hands of Jonathan B. H. Smith, administrator of the estate of George Bomford, as is averred by said Smith in his answer being on file. Whereupon, it is moved that the bill be finally disposed.

G. TOCHMAN,
Solicitor of the complainants.

17th Nov., 1851.

Whereupon all and singular the premises being by the court here seen and understood, and the said parties, by their solicitors, being heard, and after mature deliberation being thereupon had, the said court made the following decree in the premises, to wit:

Decree dismissing bill.

J. F. ENNIS, adm'r de bonis non, and others,
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J. B. H. SMITH, adm'r of George Bomford & als.

This cause having been set for final hearing upon the bill, amended bill, answers, exhibits, general replication, depositions of witnesses, agreements and admissions of counsel, and the same having been argued by counsel, and heard and considered by the court, it is, this 19th day of November, 1851, ordered, adjudged, and decreed by the court, that the bill and amended bill of the complainants be, and the same are hereby, dismissed, each party paying his own costs.

By order of the court. Test:

JNO. A. SMITH, *Clerk.*

Appeal prayed to Supreme Court, U. S.

And thereupon the said complainants, by their solicitors aforesaid, pray an appeal from the judgment and decree aforesaid, made by the said court in the premises, to the Supreme Court of the United States, and to them it is granted; whereupon they file in court here the following appeal bond, to wit:

Know all men by these presents, that we, John F. Ennis, Samuel S. Williams, Vladislaus Wancowiez, and John F. Callan, are held and firmly bound unto Jonathan B. H. Smith, administrator and trus-

tee of George Bomford, Lewis Johnson, administrator de bonis non of Thadeus Kosciusko, James Carico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, and Jonathan B. H. Smith, in the full and just sum of five hundred dollars, current money of the United States; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-eighth day of November, eighteen hundred and fifty-one.

Whereas lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein John F. Ennis, administrator de bonis non of Joseph Zolkowski, and others, were complainants, and the said Jonathan B. H. Smith, administrator and trustee of George Bomford, Lewis Johnson, administrator de bonis non of Thadius Kosciusko, James Carico, Samuel Stott, George C. Bomford, Jacob Gideon, Ulysses Ward, Jonathan B. H. Smith, and others, were defendants, a decree was rendered against the said complainants, and they having entered an appeal to the Supreme Court of the United States:

Now the condition of the above obligation is such, that if the said complainants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and to remain in full force and virtue in law.

JOHN F. ENNIS, [L. S.]
SAMUEL S. WILLIAMS, [L. S.]
VLADISLAUS WANKOWIEZ, [L. S.]
JOHN F. CALLAN. [L. S.]

Signed, sealed, and delivered, in presence of—
G. TOCHMAN,
H. NAYLOR, as to JNO. F. CALLAN.

And the same having been approved of, it is ordered that a record of the proceedings aforesaid, with all things thereunto relating, with the citation, be transmitted to the said Supreme Court, which is done accordingly.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, this 2nd day of December, 1851.

JNO. A. SMITH, *Clk.* [L. S.]

The defendants, by their solicitors, file the following paper:

COURT HOUSE, 1*st Decr.*, 1851.

John A. Smith, esqr., clerk of the circuit court of the District of Columbia.

You have stated to us that in making out the Kosciusko record for the Supreme Court, it is intended to omit the original documents A and B, in the Russian language, and to put in only what the complainants

1993.

produce as translations; and also that the counsel of the complainants have desired you not to insert the proceedings in the chancery cause against Bomford, administrator, by Klinckiewicz, claiming as next of kin of Kosciusco, referred to in the answers of the defendants.

The Russian documents A and B, were put in by the complainants, as part of their testimony before the commissioners, and were returned by them.

The papers filed by the complainants as translations were not made in this cause, but were private translations, made in 1847, before the filing of this bill; and they as well as the originals have always been objected to by the defendants.

As you have not yet completed the copy of the record for the Supreme court, we request, on the part of the defendants, that if any of these documents are to be sent up, you will insert copies of the original documents A and B; and also the proceedings in the Klinckiewicz cause.

Respectfully, &c.,

W. REDIN,

JNO. MARBURY,

Counsel for the sureties of Bomford.

The reason of the documents A and B, in the Russian language referred to above, being omitted in the record, is that there is no one in the office who understands that language; a translation of them is in the record.

The papers in the case of Klinckiewicz against Bomford, were left out at the instance of the complainants' solicitor, on the grounds that they formed no part of the record.

Respectfully, &c.,

JNO. A SMITH, *Clk.*